

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JAMIE LEIGH JONES,  
PLAINTIFF,  
  
v.  
  
H-07-CV-2719  
HOUSTON, TEXAS  
JUNE 29, 2011  
8:3 A.M.  
  
HALLIBURTON COMPANY D/B/A  
KBR KELLOGG BROWN & ROOT  
(KBR); KELLOGG BROWN & ROOT  
SERVICES, INC.;  
DEFENDANTS.  
. . . . .

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

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08:33

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P R O C E E D I N G S

2

THE COURT: Okay. Good morning. Welcome.

3

I'm told you need to talk to me about something.

4

08:33

5

MR. KELLY: I think there are a number of issues; but I do have one, your Honor. I think the first witness being called this morning is Dr. John Irwin.

6

7

MS. VORPAHL: If you would wait just one second, Stephanie is really the one who needs to hear this.

8

9

MR. KELLY: I'm happy to wait.

08:33

10

MS. VORPAHL: This is Stephanie's witness.

11

MR. KELLY: You ready?

12

MS. HOLCOMBE: I am.

13

14

08:33

15

MR. KELLY: The first issue, your Honor, is Dr. John Irwin is being called this morning. We've had an issue. As the Court knows, we had a Daubert motion to exclude Dr. Irwin earlier on. I think the Court has agreed that he should not be allowed to opine on Opinions Number 2 and Number 4 of the five that he -- I'm sorry, of the six that he had offered in his report. We would like to just briefly be reheard on a couple of them. One of them is Number 6.

16

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08:34

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21

THE COURT: This is your witness, and you're arguing the ruling should be modified?

22

23

24

MR. KELLY: No, your Honor, this is the defendants' witness.

08:34

25

THE COURT: Okay. That's what I thought. I thought

08:34 1 the limine was the defendants' witness.

2 MR. KELLY: It's a defendants' witness being taken out  
3 of order, your Honor.

4 THE COURT: Okay. So, you're arguing now that the  
08:34 5 limine should have been broader. Is that it?

6 MR. KELLY: Yes, your Honor.

7 THE COURT: Okay. I got you now. Something you said  
8 made me confused.

9 MR. KELLY: Item Number 6 -- and I may confuse you  
08:34 10 again and I apologize ahead of time. Number 6 is he talks  
11 about urine and blood test results being negative. But in the  
12 same vein, in the very next sentence of Number 6, he says: I  
13 am not an expert in this field and cannot comment on the  
14 accuracy of these particular tests.

08:34 15 In the same sentence where he offers an opinion,  
16 he offers the reason why that opinion should not be permitted  
17 before this jury. So, we reurge Number 6 for starters.  
18 There's other issues.

19 THE COURT: Let's go one at a time.

08:35 20 MS. HOLCOMBE: Your Honor, he's not going to render  
21 any opinion regarding Number 6 or the blood results or the  
22 test. So, that's not a concern.

23 MR. KELLY: I have that --

24 THE COURT: On something like this, I love you-all,  
08:35 25 why don't you just have a conversation and get this worked out?

08:35 1 MS. HOLCOMBE: Your Honor, I thought we did last  
2 night.

3 MR. KELLY: Well, I thought we did, too; and I guess  
4 we just misunderstood one another because my understanding was  
08:35 5 that he was only being limited from --

6 THE COURT: Let's not spend any longer on something  
7 you agree about.

8 MR. KELLY: Number 1, he states that: Ms. Jones  
9 certainly misrepresented her past medical history.

08:35 10 And, your Honor, if -- the case of *Nichols versus*  
11 *American National Insurance Company* at 154 F.3d, I believe it's  
12 815 -- I can't read my own writing here. It may be 805. It's  
13 an Eighth Circuit case out of 1998 -- essentially says that an  
14 expert's stamp of untruthfulness is beyond the scope of proper  
08:36 15 expert testimony.

16 And so -- and it actually cites the case of  
17 *United States versus Azure* at 807 F.2d, 336, Page 340.

18 THE COURT: Okay. Let me just -- my --

19 (*Discussion off the record*)

08:36 20 THE COURT: Okay. So, you think that he impinges on  
21 the role of the fact finder?

22 MR. KELLY: I do, your Honor. And while he may be  
23 able to say that certain entries are inaccurate, we think he  
24 goes too far when he says that they're inaccurate because  
08:36 25 Ms. Jones was untruthful. And that's what his report says and

08:37 1 we expect him to testify to.

2 THE COURT: I got your point. Let me hear from  
3 Ms. Holcombe.

4 MS. HOLCOMBE: Your Honor, he's going to be simply  
08:37 5 pointing out the inaccuracies in her records that are apparent  
6 to him as a doctor and an expert in gynecological --

7 THE COURT: What is the opinion you want from him?

8 MS. HOLCOMBE: Your Honor, the opinion is in  
9 Dr. Schulz' record, it states that Ms. Jones failed to mention  
08:37 10 her prior --

11 THE COURT: What's your ultimate point with Dr. Irwin?

12 MS. HOLCOMBE: My ultimate point overall?

13 THE COURT: Yes.

14 MS. HOLCOMBE: The ultimate point overall, your Honor,  
08:37 15 is that the findings on July 28, 2005, by Dr. Schulz regarding  
16 the lower genital tract could have been caused by things other  
17 than non-consensual sex, that they are --

18 THE COURT: Why do we need to comment on her veracity?

19 MS. HOLCOMBE: We're not commenting on necessarily  
08:37 20 whether she is a truthful person, just the importance of why --  
21 the fact that she did not disclose her prior sexually  
22 transmitted disease history to Dr. Schulz, how that might have  
23 impacted Dr. Schulz' findings that day when she was examining  
24 her because of her six-month history -- it's limited to her  
08:38 25 sexually transmitted disease history --

08:38 1 THE COURT: Well, but why does -- I mean, that is such  
2 a sensitive topic. It doesn't surprise me she wouldn't have  
3 disclosed that immediately after a rape if -- according to her  
4 allegation. Why does that make her medical history faulty on  
08:38 5 the issue of whether she was raped?

6 MR. McKINNEY: She had several surgeries to address  
7 her STDs in the 60-day time period.

8 THE COURT: Okay. So, it's the surgeries we're  
9 talking about?

08:38 10 MR. McKINNEY: Yes, related to the STDs, which was  
11 denied, which -- if a history of STD is denied to a physician,  
12 the physician does not -- not knowing that the opposite is  
13 true, does not ask important follow-up questions, last  
14 outbreak, form of treatment, matters of that nature, to assist  
08:39 15 the physician -- particularly in performing a rape kit  
16 examination, to assist the physician in determining the  
17 alternative causes.

18 THE COURT: The only relevant point is that the damage  
19 Dr. Schulz thought she saw could have been attributed to  
08:39 20 surgery?

21 MR. McKINNEY: Correct.

22 MS. HOLCOMBE: And to other causes, your Honor,  
23 including -- it's actually not just the surgery. It is the six  
24 months prior to that, that trichloroacetic acid on the lower  
08:39 25 genital tract, which Dr. Irwin will testify that's like putting



08:39 1 battery acid on that wound -- that area, Aldara cream, which is  
2 also another damaging treatment, on top of cryosurgery that  
3 occurred in June, as well as the laser surgery. It's this  
4 six-month period leading up that did impact --

08:39 5 THE COURT: Well, why does he have to come out with a  
6 flat-footed statement like she lied or --

7 MR. MCKINNEY: He's not going to do that.

8 MS. HOLCOMBE: No, your Honor.

9 THE COURT: All we need to say is that Dr. Schulz did  
08:39 10 not have the benefit of knowing that she had OB-GYN surgery in  
11 the last six months.

12 MS. HOLCOMBE: That's fine, your Honor.

13 MR. KELLY: I think I agree with that, your Honor, as  
14 long as there's no question that says: If she had told --

08:40 15 THE COURT: No, no. We don't need that from the  
16 doctor.

17 MR. KELLY: And finally, your Honor -- and I think  
18 this is pretty much along the same lines -- the pre-Iraq  
19 medical history is certainly different and the number of  
08:40 20 examinations and tests for sexually transmitted disease. She  
21 was obviously very concerned about the possibility of these  
22 diseases.

23 As long as it goes in line with the Court's order  
24 that he just gave, I'm perfectly fine with that. It's the  
08:40 25 issue that it may go into 412 issues and the other relevance

08:40 1 issues that --

2 THE COURT: She's not going to do that.

3 MR. KELLY: The final thing, your Honor, is I would  
4 like a very brief voir dire of the doctor because it appears  
08:40 5 that he has not done any treatment for sexually transmitted  
6 diseases, based upon his report and his curriculum vitae, since  
7 1978, which I believe would make him completely -- I'm just  
8 telling you what his report and his CV says.

9 THE COURT: Let's take care of the voir dire by going  
08:41 10 and asking him right now. How about that?

11 MS. HOLCOMBE: That would be great.

12 THE COURT: Can we get him on the stand?

13 MS. HOLCOMBE: Absolutely, your Honor.

14 MR. KELLY: On another topic, your Honor --

08:41 15 THE COURT: You told me your final point.

16 MR. KELLY: No, that was the final point on this  
17 issue.

18 THE COURT: On this issue, I see.

19 MR. KELLY: Yes. And I'm just making the Court aware  
08:41 20 because I don't know if you want to handle it this morning or  
21 if you want to handle it later. But before the other witnesses  
22 are called today, we had not gotten through the plaintiffs'  
23 motions in limine and I know Mr. Estefan wants to address --

24 THE COURT: We'll do that next break.

08:41 25 MR. KELLY: Okay.

08:41 1 THE COURT: Doctor, good morning, sir. We're going to  
2 have you up here in this seat nearest me. And before you take  
3 your seat, sir, Ms. Loewe will administer the oath.

08:42 4 MS. LOEWE: Do you solemnly swear the testimony you're  
5 about to give in the matter now before the Court will be truth,  
6 the whole truth, and nothing but the truth?

7 THE WITNESS: I do.

8 THE COURT: Okay. Doctor, try to make yourself as  
9 comfortable as you can. It's hard for a tall person, but --

10 JOHN IRWIN, DULY SWORN, TESTIFIED:

11 VOIR DIRE EXAMINATION

12 BY MR. KELLY:

13 Q. Doctor, good morning.

14 A. Good morning.

08:42 15 Q. You and I have not met?

16 A. We have not.

17 Q. My name is Todd Kelly. I represent Jamie Leigh Jones. I  
18 have just a few questions outside the presence of the jury that  
19 I want to clear up regarding your qualifications, sir, if you  
08:42 20 don't mind.

21 A. Sure.

22 Q. If I understood the curriculum vitae and report that you've  
23 prepared, the last time that you evaluated sexual assault  
24 victims was when you were working at Ben Taub?

08:42 25 A. On an acute basis. I mean, patients in private practice --

08:42 1 I'm primarily in private practice; and so, patients that are  
2 sexual assault victims rarely, if ever, come to see their  
3 private practitioner. They generally go to an emergency room.  
4 Now, I've seen them subsequently after that emergency room  
08:43 5 evaluation throughout my career.

6 Q. Sure. But as far as being able to evaluate someone in the  
7 acute phase after a rape, that has not happened since you were  
8 in Ben Taub Hospital in 1978. Is that right?

9 A. That's probably correct, yes.

08:43 10 Q. Okay. And as far as treating a woman for STDs, when is the  
11 last time that you performed laser surgery, sir?

12 A. Last -- early on Monday.

13 Q. On Monday. Okay. So, as far as the evaluation itself,  
14 it's been since 1978, the -- you haven't written any

08:43 15 publications on sexually transmitted diseases, have you, sir?

16 A. Well, I have several publications on cervical dysplasia  
17 that I wrote during my residency and so forth that are -- at  
18 the time it wasn't considered a sexually transmitted disease.

19 Now we know it is. So, technically I did write and publish  
08:44 20 articles on cervical dysplasia and cryotherapy.

21 Q. In the 1970s?

22 A. In '78, right.

23 Q. Correct. You have not offered any publications on the use  
24 of laser surgery for condyloma, have you, sir?

08:44 25 A. I have not.

08:44 1 Q. Are you an expert on rape examinations, doctor?

2 A. No.

3 MR. KELLY: Your Honor, I think we would challenge  
4 this witness' ability to testify --

08:44 5 THE COURT: No, I think all that goes to weight, not  
6 admissibility. I think he's experienced in the field and can  
7 provide information that would be of assistance to the jury.

8 MS. HOLCOMBE: Your Honor, there's one more matter to  
9 take up with Dr. Irwin. It will be brief.

08:44 10 THE COURT: Your nose is going to grow.

11 MS. HOLCOMBE: I didn't bring up the first one. That  
12 was Mr. Kelly. Just we would like to preadmit Bortz 181 and  
13 174. They're from Dr. Scott's testimony relying on all these  
14 records. I think these are the only two not already admitted.

08:45 15 MR. KELLY: I thought they were; and if they're not, I  
16 have no objection.

17 THE COURT: They're admitted without objection.

18 *(Jury present)*

19 THE COURT: Thank you. Please be seated.

08:46 20 Okay. We're going to take another witness out of  
21 turn. Ladies and gentlemen, this is a witness for defendant;  
22 and he's already been sworn in.

23 **JOHN IRWIN, DULY SWORN, TESTIFIED:**

24 **DIRECT EXAMINATION**

08:47 25 BY MS. HOLCOMBE:

08:47

1 Q. Good morning.

2 A. Good morning.

3 Q. Doctor, you and I have already met; but would you introduce  
4 yourself to the jury.

08:47

5 A. My name is John Irwin. I'm an obstetrician-gynecologist in  
6 Houston.

7 Q. And what is an obstetrician and gynecologist?

8 A. Well, we provide women's healthcare, delivering babies,  
9 gynecologic services, well-woman exams and so forth.

08:47

10 Q. And, Doctor, what I am going to ask, if you could just move  
11 the mic a little bit closer to you, the jury might be able to  
12 hear you just a little bit better.

13 A. Okay.

14 Q. Are you licensed to practice obstetrics and gynecology here  
15 in Texas?

08:47

16 A. I am.

17 Q. How long have you been licensed?

18 A. I have been licensed since 1978.

19 Q. And how long have you been practicing obstetrics and  
20 gynecology?

08:47

21 A. Since 1978.

22 Q. When and where did you get your medical degree?

23 A. Got my medical degree at Baylor College of Medicine here in  
24 Houston.

08:47

25 Q. And, Dr. Irwin, you have a lot of things on your résumé.

08:47 1 Would you like -- do you have a copy of it in front of you in  
2 case we need to get --  
3 A. Yes, I do.  
4 Q. Okay. Great. And after graduating from Baylor College of  
08:48 5 Medicine, what did you do next?  
6 A. Well, I was a -- I did an internship. And then I had a  
7 two-year stint in the United States Navy. And I was stationed  
8 as an obstetrician-gynecologist; and I was stationed in  
9 Guantanamo Bay, Cuba, for the vast majority of that time and  
08:48 10 for -- then at the end, about four months, at Key West,  
11 Florida. And then once I finished that two years, I came back  
12 and completed my residency at the Baylor affiliated hospitals  
13 here in Houston; and I finished in '78.  
14 Q. Now, are you Board certified?  
08:48 15 A. I am.  
16 Q. And what does it mean to be Board certified?  
17 A. Well, each of the medical specialties has a certifying  
18 board and you take both written and practical examinations to  
19 become Board certified.  
08:48 20 Q. Is there any additional training with becoming Board  
21 certified?  
22 A. No.  
23 Q. Now, you've mentioned that you are obstetrics and  
24 gynecologist. As part of your practice, do you ever deal with  
08:49 25 women who are suffering from sexually transmitted diseases?

08:49 1 A. All the time, yes.

2 Q. And do you have -- what type of sexually transmitted  
3 diseases do you notice in the women that you treat regularly?

4 A. Well, we treat everything from gonorrhea and chlamydia to  
08:49 5 herpes, HPV, you know, Hepatitis C, all of those things are  
6 potentially sexually -- or sexually transmitted diseases. So,  
7 we see that whole spectrum.

8 Q. And I think you told me earlier, but could you please tell  
9 the jury your extra experience with your knowledge with HPV?

08:49 10 A. Well, during my residency, I became -- Ray Kaufman, who was  
11 the chairman of the department of OB-GYN at Baylor, was very  
12 interested in lower genital tract disease and particularly  
13 cervical dysplasia, abnormal Pap smears and stuff. And so, I  
14 became very interested in that; and we actually published a  
08:49 15 paper in '78 and then a couple subsequently on abnormal Pap  
16 smears.

17 Of course, in the mid -- in the late Eighties, it  
18 became evident that cervical dysplasia and vulvar condyloma and  
19 so forth were caused by a virus called Human Papilloma Virus or  
08:50 20 HPV. And so, I've had a fairly abiding interest in that topic  
21 in my private practice; and it makes up a sizeable -- it makes  
22 up a significant portion of my private practice also.

23 Q. Now, are you involved with any boards or other  
24 organizations relating to the prevention of HPV?

08:50 25 A. Yes. The American Society for Colposcopy and Cervical



08:50 1 Pathology is a national medical organization, and it -- it  
2 actually publishes guidelines for management of HPV and so  
3 forth. I was on the board of directors of that organization  
4 from '86 to '94, and then I've been involved with their  
08:51 5 educational outreach to physicians on using the HPV vaccine,  
6 Gardasil.

7 In addition to that, from -- actually, when I  
8 finished my residency in '78 through 2006, I was the director  
9 of the Baylor College of Medicine, Harris County Hospital  
08:51 10 District dysplasia/HPV clinic. And in that clinic at Ben Taub,  
11 we saw inpatients that had cervical dysplasia, vulvar HPV, and  
12 so forth. And we taught -- I taught residents and interns and  
13 medical students how to manage these problems.

14 Q. And as a part of your private practice, do you ever treat  
08:51 15 women who have recently alleged sexual assault?

16 A. Well, not in the -- not in the acute sense. I don't -- I  
17 mean, most women that have a sexual assault or alleged sexual  
18 assault seek treatment in an emergency room where rape kits and  
19 those sorts of things are performed. So, I don't -- rarely see  
08:52 20 those patients, if ever, in private practice. I did when I was  
21 in my residency, of course, but -- at Ben Taub.

22 But patients -- certainly I have patients,  
23 ongoing patients, that have had sexual assault allegations and  
24 I see those in my office later, anywhere from days to weeks  
08:52 25 later; but I don't perform the sexual assault kits and so

08:52 1 forth.

2 Q. And why are you here today for this jury?

3 A. Well, I was asked to kind of review the records, the  
4 medical records, and to kind of give my opinions regarding HPV  
08:52 5 and the allegations, I guess, of sexual assault based on the  
6 medical records.

7 Q. And are you being paid for your time here today?

8 A. Yes, ma'am.

9 Q. What is your hourly rate? What have you been paid?

08:53 10 A. Well, in reviewing the records, I charge \$350 an hour. So,  
11 I think that I've billed your firm maybe 1800 or \$2,000 or so  
12 for that over the preceding however long, year or so. And then  
13 I've not billed you for time that I've spent reviewing -- going  
14 over the medical records in preparation for my testimony today  
08:53 15 and then -- so, that will come.

16 And then I usually bill -- since I canceled my  
17 medical office today and canceled surgery and so forth, I  
18 generally bill just \$5,000 for the day that I'm here.

19 Q. So, you're not going back to work when you're finished  
08:53 20 today; you've had to cancel your entire day?

21 A. I did.

22 Q. What did you rely on when you -- you said earlier that you  
23 were here to give opinions regarding Ms. Jones' allegations and  
24 the injuries that she claims -- or that Dr. Schulz found  
08:54 25 relating to her lower genital tract. And in forming those

08:54

1 opinions, what did you rely on?

2 A. Well, the medical records.

3 Q. And did you rely on any deposition testimony as well?

4 A. Well, I reviewed -- I reviewed a couple of depositions.

08:54

5 I'm trying to remember. But really my opinions are primarily  
6 based on the medical records. I mean, the medical records are  
7 what they are; and it's the only thing that I can really  
8 comment on.

9 Q. And are these types of medical records reasonably relied

08:54

10 upon by experts in your field when offering these types of  
11 opinions?

12 A. Yes.

13 Q. And after reading these medical records of Ms. Jones, were  
14 you able to come to some conclusions in this case?

08:54

15 A. Well, I believe so.

16 Q. And were these conclusions within a reasonable degree of  
17 medical probability?

18 A. Yes.

19 Q. Let's talk about these conclusions.

08:55

20 MS. HOLCOMBE: If we could put up Joint 105.

21 May I approach the witness, your Honor?

22 THE COURT: You may.

23 BY MS. HOLCOMBE:

24 Q. Here you go, Dr. Irwin. Here's a copy.

08:55

25 A. Thank you.

08:55 1 Q. Dr. Irwin, have you had -- in reviewing the records, did  
2 you particularly read and review this record from Dr. Schulz?

3 A. Yes, I did.

4 Q. And I would like to turn to Jones 00035 -- I'm sorry,  
08:56 5 Jones 00032.

6 A. All right.

7 Q. Now, Dr. Irwin, what were the findings of Dr. Schulz on  
8 July 2000 -- July 28, 2005, after she examined Ms. Jones after  
9 the incident?

08:56 10 A. Well, she says that the vulva was erythematous. That just  
11 means reddened. And there were fissures around the  
12 introitus -- that's the vaginal opening -- the left labia, the  
13 perineum, and the anus.

14 Q. Okay. And what exactly are fissures, if you could help the  
08:56 15 jury understand?

16 A. Well, fissures are slight tears in the skin. Probably the  
17 best analogy would be like a paper cut. It's just in the  
18 epidermis, just in the superficial layer of the skin.

19 Q. And based on your experience and your knowledge in this  
08:57 20 area, are fissures -- can a woman experience fissures during  
21 consensual sex?

22 A. Yes.

23 Q. Can a woman experience fissures during non-consensual sex?

24 A. Yes.

08:57 25 Q. Can a woman experience fissures during no sex at all?

08:57 1 A. Yes.

2 Q. And what would be some examples of where a woman might  
3 experience fissures when she hasn't even had sex?

4 A. Well, riding a bicycle comes to mind. It's actually fairly  
08:57 5 common. Women that shave in the perineal area can develop  
6 irritation in the skin and the skin can fissure quite easily.  
7 Basically any sort of even minor trauma.

8 The vulvar skin is a little different than the  
9 skin on the back of your hand or on your back or anywhere else.

08:57 10 It's what we call non-keratinized epithelium. Keratin is a  
11 layer of the skin that protects your skin from injury. The  
12 vulvar skin is what we call non-keratinized. It's like the  
13 inside of your mouth would be non-keratinized epithelium. And  
14 it's much thinner than the skin on the back of your hand. So,  
08:58 15 it's very -- it's quite subject to trauma quite easily.

16 Q. Can a woman experience fissures from scratching or an  
17 infection?

18 A. Oh, certainly. We see fissuring all the time with the  
19 yeast infections. A person has a yeast infection and they --  
08:58 20 and the yeast infection causes irritation of the skin. And  
21 even without scratching, you can see fissuring. But scratching  
22 certainly -- wiping -- toilet paper can cause fissuring,  
23 particularly if the skin is damaged.

24 Q. Let me ask you this, Dr. Irwin. Can a perfectly healthy  
08:58 25 woman with no history of sexually transmitted diseases

08:59 1 experience fissures at some point in her life?

2 A. In fact, most women probably do.

3 Q. Can she experience fissures, that same healthy woman, from  
4 consensual sex?

08:59 5 A. Yes.

6 Q. And what would be examples of when consensual sex might  
7 produce fissures in a very healthy woman?

8 A. Well, consensual sex, you know, varies a lot. It depends  
9 on the size of the male partner. I mean, some guys are large,  
08:59 10 some are not. Some guys -- some women are small, some are not.  
11 It depends on how long actual vaginal intercourse went on,  
12 foreplay, what went on during foreplay, if at all.

13 It depends on sexual arousal and lubrication of  
14 the vagina. So, there are many, many, many factors that would  
08:59 15 play into that.

16 Q. How likely is it for a woman who actually has a history of  
17 sexually transmitted diseases and a history of treatment of  
18 sexually transmitted diseases to experience fissures during  
19 consensual sex?

09:00 20 A. Well, in particular, the treatment for certainly HPV, for  
21 example, laser and cryotherapy and so forth, damages the skin  
22 pretty significantly. And certainly that skin is damaged and  
23 would fissure much more easily, if you will.

24 Q. I would like to take a -- you had a chance, you said, to  
09:00 25 look at Ms. Jones' recent medical history up until she left for

09:00 1 Iraq?

2 A. Yes.

3 Q. And before we get into each record separately, what  
4 sexually transmitted diseases was Ms. Jones diagnosed with?

09:00 5 A. Well, prior to her tour of duty in Iraq, she was diagnosed  
6 with herpes, genital herpes, and also genital condyloma, which  
7 is caused by HPV, both of which are sexually transmitted.

8 MS. HOLCOMBE: Could we put up Bortz 173, please?

9 May I approach the witness, your Honor?

09:01 10 THE COURT: You may.

11 BY MS. HOLCOMBE:

12 Q. Dr. Irwin, what is the date -- whose record is this?

13 A. Well, this is a record, I guess, from that -- the Sadler  
14 Clinic. I think this was a physician's assistant.

09:01 15 Q. And what is the date of this record?

16 A. Looks like it is the 20th of January of '05.

17 Q. All right. And what specifically is significant about this  
18 record with regards to Ms. Jones' sexually transmitted  
19 diseases?

09:01 20 A. Well, she had complained about a rash in the vaginal area  
21 and a lot of discomfort. And I gather that she had been seen  
22 in the emergency room and told it was herpes. And so, this is,  
23 I guess -- I gather, a follow-up visit either that same day or  
24 the next day; and she had complained of fever and muscle aches  
09:02 25 and burning and pain with urination. And she had been placed

09:02 1 on Valtrex, I guess, from the emergency room.

2 Q. And what -- I'm sorry.

3 A. Go ahead.

4 Q. I didn't mean to interrupt. I was just going to ask you  
09:02 5 what specific symptoms was she experiencing in there regarding  
6 lesions?

7 A. Well, she was in a lot of pain. She described extreme  
8 burning pain with urination. She was even walking -- they say  
9 her gait was limited and guarded, which means it was difficult  
09:02 10 for her to walk. And then on the exam she had described  
11 profuse lesions from labia minora to the perineum with weeping  
12 and exudate and exquisite pain. She had a lot of lesions with  
13 ulcerations stated bilaterally.

14 Q. Dr. Irwin, can I stop you there for just one second?

09:03 15 You mentioned she had profuse lesions on the  
16 labia minora and the perineum. Could you please explain to the  
17 jury in layman's terms kind of where that is on the body?

18 A. Well, in the female genital anatomy, the labia minora are  
19 the labia closest to the vaginal introitus, to the vaginal  
09:03 20 opening. The perineum we describe as that area of skin  
21 basically from the clitoris to the rectum.

22 And so, the description is that these lesions in  
23 the drawing there show that these lesions kind of extended from  
24 the vaginal opening down to the rectum.

09:03 25 Q. And, Dr. Irwin, I would like to call your attention to this



09:04 1 word right here in the middle of the section. What is that  
2 word?

3 A. "Erythematous."

4 Q. And what does that mean?

09:04 5 A. Redness.

6 MS. HOLCOMBE: Can we put Bortz 174, please?

7 May I approach the witness, your Honor?

8 THE COURT: Yes, you may.

9 BY MS. HOLCOMBE:

09:04 10 Q. Okay. Dr. Irwin, looking at the top left-hand corner, what  
11 is the date of Ms. Jones' record for this one?

12 A. Looks to be the 25th.

13 Q. Of what month?

14 A. Oh, I'm sorry. Of January, '05.

09:04 15 Q. And about how many months would you say that this took  
16 place before the incident in July?

17 A. Oh, I guess six -- six months, five months. Six.

18 Q. And what are the specific findings during the actual exam  
19 of Ms. Jones six months before she left for Iraq?

09:04 20 A. Well, the -- the herpetic lesions were still there. She  
21 describes them as bilateral. There was less exudate, which  
22 means pus or infectious material. The swelling, the edema had  
23 gone down; but it was, as usual, exquisitely tender to  
24 palpation, she says.

09:05 25 MS. HOLCOMBE: Can we put up Bortz 179, please?

09:05

1

May I approach the witness?

2

THE COURT: Yes, you may.

3

BY MS. HOLCOMBE:

4

Q. Dr. Irwin, looking at the top left-hand corner, what is the date of this record?

09:05

5

A. April the 12th.

6

7

Q. Now, about how many months before the July deployment was Ms. Jones in Dr. Scott's office for this visit?

8

9

A. About three months.

09:05

10

Q. And what specifically is she complaining of at this visit?

11

A. Well, she's complaining of vaginal irritation. She says that her symptoms are not as severe as her previous herpes outbreak, but that she had been on Valtrex for the herpetic outbreak and she felt like it wasn't helping her.

12

13

14

09:06

15

Q. And what, if any, treatment is being applied to the condyloma that she complains of?

16

17

A. Well, on the exam, the doctor -- Dr. Scott, I guess that is, describes multiple lesions on the labia majora -- and those are the little more lateral lips of the vagina -- extending to the perineum down toward the rectal area that -- compatible with condyloma. And condyloma or genital warts have a very typical appearance. And the doctor on that day applied TCA or trichloroacetic acid to these genital warts. That's a common treatment for genital warts.

18

19

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09:06

25

Q. And how -- could you please describe to the jury what is it

09:06 1 like when a female patient is treated with trichloroacetic  
2 acid? How does that affect the body, if at all?

3 A. Trichloroacetic acid is very caustic. It's akin to battery  
4 acid. It really burns and it -- the idea is that it  
09:07 5 actually -- when you put it on the condyloma, it actually kills  
6 the cells and it actually causes an ulceration of the skin.

7 And it -- it's -- although it's fairly viscous,  
8 you can -- once you dab it on the skin, it does spread a little  
9 bit. So -- and which you kind of intend to happen because you  
09:07 10 want to kill not only the wart itself but the little area  
11 around it, which undoubtedly has virus there also.

12 Q. Thank you.

13 MS. HOLCOMBE: Can we put up Bortz 180, please?

14 May I approach the witness?

09:07 15 THE COURT: You don't need to keep asking me. It's  
16 your witness, so go ahead.

17 MS. HOLCOMBE: Yes, your Honor.

18 BY MS. HOLCOMBE:

19 Q. Dr. Irwin, what is the date of this record where Ms. Jones  
09:08 20 visited Dr. Scott?

21 A. Well, this is April the 22nd, I guess ten days later after  
22 the last one.

23 Q. And about how many months before her July deployment?

24 A. This is right at three months.

09:08 25 Q. Dr. Irwin, what did Ms. Jones come to Dr. Scott that day

09:08 1 complaining of regarding her lower genital tract?

2 A. Well, she -- this was a follow-up visit for treatment of  
3 the condyloma; and it appears that after using the  
4 trichloroacetic acid, Dr. Scott provide -- prescribed Aldara,  
09:08 5 or imiquimod is the generic name for it. And she had used that  
6 on four occasions.

7 Q. Dr. Irwin, can I stop you for one second right there?

8 Can you explain to the jury Aldara and how that  
9 is used and the effects on the body?

09:08 10 A. Aldara or imiquimod is an immune stimulant. It stimulates  
11 the T-cells in the skin, which are your body's basic defense to  
12 attack the virus that is in the cells, incorporated in the  
13 cells, and causes the condyloma. So, what imiquimod does is  
14 that it -- this drug stimulates the body's immune system and  
09:09 15 your immune system kind of voraciously attacks the cells that  
16 contain the virus HPV and the warts.

17 Q. And what, if anything, does it do to the actual skin that  
18 it's applied to?

19 A. Well, it's very, very irritating. This stuff is -- the  
09:09 20 Aldara or imiquimod is about the consistency of hand lotion;  
21 and so, what the patient does is apply this to the whole  
22 perineal skin. You don't really put it on any specific wart.

23 So, the patient will rub this into the skin from  
24 the labia down to the rectal area. Most patients complain of  
09:10 25 intense inflammation and burning and so forth. It lasts four

09:10 1 or five days. And then -- so, then the normal treatment is to  
2 use it every three or four days.

3 Q. Dr. Irwin, looking at the middle of the page, what was  
4 noticed by Dr. Scott during this exam of the lower genital  
09:10 5 tract?

6 A. Well, she says: Multiple erythematous ulcers nearer to the  
7 perineum. Three to four condyloma at the bottom portion of the  
8 labia.

9 Those ulcers she -- she -- Dr. Scott, I think,  
09:10 10 says that they're herpes, which they could have been; but they  
11 also could have been from the imiquimod.

12 Q. Dr. Irwin, I just want to call your attention to this word  
13 right here in the middle of the page regarding the ulcers.  
14 What is that word again?

09:11 15 A. "Erythematous."

16 Q. And what does that mean?

17 A. Red.

18 Q. Okay.

19 MS. HOLCOMBE: Look at Bortz 181, please.

09:11 20 BY MS. HOLCOMBE:

21 Q. Dr. Irwin, it's sort of hard to see the specific date based  
22 on this particular record, but we can tell what month it is.  
23 What month was this record, or did Ms. Jones visit the doctor  
24 that day?

09:11 25 A. Well, it's May; and it's either -- it's 0 -- something,

09:11

1 SO --

2 MS. HOLCOMBE: Your Honor --

3 BY MS. HOLCOMBE:

4 Q. Oh, sorry, Doctor. I'm going to represent to you that it  
09:11 5 is 2005 on a clearer document.

6 A. Right, probably is.

7 Q. What was Ms. -- about how many months before Ms. Jones'  
8 July deployment was she in to see Dr. Scott regarding that?

9 A. Well, this is two and a half months or so.

09:11

10 Q. What was she complaining about on this day regarding the  
11 lower genital tract?

12 A. Well, she had -- she complained of her genital warts and  
13 she wanted to -- Dr. Scott to redo the trichloroacetic acid.

14 Q. So, two and a half months before Ms. Jones was deploying  
09:12 15 for Iraq, she asked for trichloroacetic acid?

16 A. Yes.

17 Q. To be applied to the lower genital tract?

18 A. Yeah. The condyloma, there were three lesions, she says;  
19 and she put the trichloroacetic acid on those lesions.

09:12

20 MS. HOLCOMBE: Can we look at Bortz 182, please?

21 BY MS. HOLCOMBE:

22 Q. Dr. Irwin, I apologize. This is also a harder document to  
23 read. But I'm going to represent to you that this is May 17th  
24 of 2005.

09:12

25 A. That's what it appears to be, yeah.

09:12 1 Q. About how many months -- how many weeks or months are we  
2 now before her July deployment?

3 A. Well, I guess you're two -- two -- right at two months.

4 Q. And what was Ms. Jones complaining to Dr. Scott about  
09:13 5 regarding her lower genital tract on this day about two and a  
6 half months before she left?

7 A. Well, she reports that the genital warts have worsened and  
8 she -- the Aldara cream had not done much and she was  
9 complaining of vulvar burning and the Aldara cream causes her  
09:13 10 skin irritation, which is what it does. It does do that.

11 Q. Can I stop you there, Dr. Irwin?

12 In your experience as a gynecologist, do you  
13 typically use Aldara cream on your patients?

14 A. Yes.

09:13 15 Q. And based on your experience with your patients, how do  
16 they normally react when Aldara cream is used on a regular  
17 basis?

18 A. Well, it hurts like all get out. It does hurt. It's very  
19 uncomfortable.

09:14 20 Q. What about the skin after it's used?

21 A. Well, the skin is very, very irritated for probably several  
22 weeks or longer sometimes. I mean, it's a pretty tough drug to  
23 use.

24 MS. HOLCOMBE: Bortz 183, please.

09:14 25 BY MS. HOLCOMBE:

09:14 1 Q. Now, Dr. Irwin, what date are we now at?

2 A. This is May 25th.

3 Q. And how long before -- or how many months before Ms. Jones'  
4 deployment to Iraq in July?

09:14 5 A. Well, this is right at eight weeks, two months.

6 Q. And what was Ms. Jones seen for at Healthsouth Surgery  
7 Center of Conroe that day?

8 A. Well, Dr. Scott, on that previous visit, had recommended  
9 that she -- because she was not really responding very well to  
09:14 10 the -- either the TCA or the imiquimod, she had recommended  
11 that she have a laser of these condyloma.

12 Q. And I notice on here, Doctor, that -- could you tell me  
13 where Dr. Scott mentioned that she was having the vulvar  
14 condyloma?

09:15 15 A. Well, in the operative note she describes she had extensive  
16 vulvar condyloma involving the posterior fourchette, which is  
17 just the little portion of the vaginal and vulvar tissue that's  
18 just below the vaginal opening and toward the anus.

19 Q. And, Dr. Irwin, what type or types of laser or treatment  
09:15 20 was performed on Ms. Jones that day?

21 A. Well, this is a carbon dioxide laser. It's -- carbon  
22 dioxide lasers have been used for a long time to treat  
23 condyloma. She also -- she says that she used the laser to  
24 coagulate the vulvar condyloma.

09:16 25 Lasers are -- the operator can set the laser to



09:16 1 what we call a -- we talk about power density. And the laser,  
2 carbon dioxide laser, if you really focus the laser beam, then  
3 the laser actually vaporizes the tissue. It doesn't burn it  
4 off; but it vaporizes it, which is actually what you want to do  
09:16 5 because if you vaporize the tissue, you don't get a lot of  
6 thermal damage to the surrounding skin.

7 If you pointed a laser at your hand with a  
8 high-power density, it would literally kind of almost burn a  
9 little hole in your skin but you wouldn't -- where it hit, but  
09:16 10 you wouldn't have any thermal damage to the skin surrounding  
11 it. Unlike if you put your hand or finger on a stove top  
12 burner, you'll get a -- where you touch it, but you'll also get  
13 damage to the surrounding skin.

14 Now, Dr. Scott, she says that she coagulated,  
09:17 15 which may mean that she -- and I don't know -- but if she used  
16 a low-power density, then -- which if you're not terribly  
17 experienced in using this laser -- many gynecologists do -- it  
18 would cause more thermal injury because of the low-power  
19 density.

09:17 20 Then she says that there was apparently a large  
21 condyloma that she used electrocautery, and this is like an  
22 electrical knife. It actually cauterizes off the tissue. So,  
23 you can take a piece of tissue and actually cut it off. It's  
24 fairly expedient, but it does cause a lot of thermal damage to  
09:17 25 the skin.

09:17 1 Q. And, Dr. Irwin, how long does a typical patient, in your  
2 experience -- let me ask you this. Have you performed these  
3 type of surgeries before?

09:18 4 A. Well, when I went into private practice in 1978, the laser  
5 was just coming in to being used for lower genital tract  
6 disease in women. And so, I convinced my group in 1980 to get  
7 a carbon dioxide laser. So, really since 1980 -- so, some  
8 30-plus years, I've used the laser to treat lower genital tract  
9 disease from HPV of the vagina to the vulva to the cervix and  
09:18 10 so forth and so on and so on. So, I've done literally  
11 thousands of these cases over that period of time.

12 Q. And when was the most recent time that you performed the  
13 laser surgery, in case you happen to know?

14 A. Monday.

09:18 15 Q. This past Monday?

16 A. This past Monday.

17 Q. And based on your own experience of using laser surgery  
18 when using to treat condyloma, about how long does it normally  
19 take a woman to recover? And when I say "recover," I mean the  
09:18 20 skin itself to recover.

21 A. Well, the skin, the vulvar skin, relatively speaking it --  
22 it, again, is non-keratinized. It does -- it heals perhaps  
23 quicker than skin in other places; but it really takes a long,  
24 long time for the skin to recover from this.

09:19 25 The skin would be probably pretty normal in

09:19 1 appearance maybe a month or two later. But the skin -- the  
2 skin is not completely regenerated. It just takes a long time.  
3 So, I would say several months.

4 Q. And based on your experience in treating these types of  
09:19 5 patients, does it affect your opinion at all or the length of  
6 time if a patient has been using things like trichloroacetic  
7 acid and Aldara cream numerous times up until the surgery?

8 A. Well, yes. I mean, you know, this is a relatively small  
9 area of skin, maybe -- maybe, you know, two or three square  
09:20 10 inches. And in a six-month period of time, this poor woman  
11 had, like, World War III played out on that skin. I mean, she  
12 had -- she had cautery, she had freezing, she had laser, she  
13 had trichloroacetic acid, she had Aldara. So, she had -- the  
14 skin was very, very, very damaged.

09:20 15 MS. HOLCOMBE: Can we put up Bortz 184, please?

16 BY MS. HOLCOMBE:

17 Q. Dr. Irwin, we're back at Dr. Scott's office. What is the  
18 date of this record?

19 A. June the 3rd.

09:20 20 Q. And about how long before Ms. Jones' July deployment?

21 A. Well, again, about -- I guess about seven weeks.

22 Q. Okay. And this is after -- is this after the surgery that  
23 she just had?

24 A. Yes, it appears to be about seven or eight days after the  
09:21 25 laser surgery.

09:21 1 Q. And what is she complaining of to Dr. Scott is happening to  
2 her lower genital tract at this point?

3 A. Well, she says that she's having itching and thinks that  
4 the condyloma are back.

09:21 5 Q. And specifically, Dr. Irwin, if we could look to the middle  
6 of the page, what is she -- what is the finding during the exam  
7 at this point?

8 A. Well, she -- Dr. Scott says that the external genital is  
9 healing well, but around the anus there are three small  
09:21 10 condyloma.

11 Q. So, even after the laser surgery in May of 2005, Dr. Scott  
12 still found condyloma around the anus?

13 A. Yes. She either -- she may have just missed them when she  
14 did the laser or they're -- they pop up. These condyloma,  
09:21 15 particularly the little ones, they come up pretty quickly,  
16 so --

17 MS. HOLCOMBE: Bortz 186, please.

18 BY MS. HOLCOMBE:

19 Q. Dr. Irwin, what is the date of this particular record?

09:22 20 A. Well, there's a -- I guess a telephone call on 6-9 for --  
21 call in for Valtrex. And then there's -- looks like an office  
22 visit on June the 13th.

23 Q. And who is the doctor?

24 A. This is Marcella Ritter.

09:22 25 Q. And what is noteworthy about this particular record

09:22 1 regarding Ms. Jones' lower genital tract?

2 A. Well, she's here for what she thought were recurrent warts.  
3 She has had -- she states that Dr. Ritter says she's had some  
4 in the perirectal area that she treated with cryocautery fairly  
09:22 5 recently. I don't know -- I don't know when that was. But  
6 clearly it is.

7 Q. And, Dr. Irwin, if you could look back at the other record  
8 regarding the May 25th surgery, who was the doctor that  
9 performed that surgery?

09:22 10 A. Well, that was Dr. Scott.

11 Q. And who is the doctor who's performed this cryocautery of  
12 the perirectal area?

13 A. Dr. Ritter, Marcella Ritter.

14 Q. And what is cryocautery?

09:23 15 A. Well, cryocautery is another destructive means of trying to  
16 treat condyloma. It's -- they use liquid nitrogen, which gets  
17 down to, I think, minus 70 degrees Centigrade. And you touch a  
18 little probe to the skin and it basically freezes the skin and  
19 so, kills the cells that that probe touches. Dermatologists  
09:23 20 use it all the time in the office, as do gynecologists.

21 Q. And after having recent surgery several weeks before, how  
22 would cryocautery typically affect the skin after it's applied?

23 A. Well, again, this is just -- it's just another damage to  
24 the skin. It's, again, an ablative or destructive means of  
09:24 25 killing these warts.

09:24 1 MS. HOLCOMBE: Can we put up Bortz 188, please?

2 BY MS. HOLCOMBE:

3 Q. Dr. Irwin, what is the date of this record?

4 A. July the 20th.

09:24 5 Q. And about how soon before Ms. Jones leaves for Iraq did  
6 this visit take place?

7 A. Well, probably three or four days, I guess.

8 Q. And what is noteworthy -- I would like to bring your  
9 attention, actually, to the middle of the page where it says:

09:24 10 Condyloma resolved.

11 If condyloma -- what does that mean in your  
12 experience?

13 A. Well, that means in Dr. Scott's -- in looking at the  
14 perineum and the vulva, she did not see any condyloma.

09:24 15 Q. Does that mean that the actual lower genital tract, the  
16 skin itself is perfectly fine and no issues whatsoever?

17 A. Oh, no. I mean, most probably, particularly at this stage  
18 of the game, there's still virus in the skin. It just hasn't  
19 caused any -- you can't see any manifestations of the virus.

09:25 20 Q. And given her treatments of trichloroacetic acid on several  
21 occasions and Aldara cream on several occasions and several  
22 surgeries, is -- the word "condyloma resolved," does that mean  
23 to you that the actual skin itself has completely healed from  
24 all of that?

09:25 25 A. No. I don't think that -- I don't think that she -- well,

09:25 1 I don't want to -- it doesn't mean that at all. It just means  
2 that the skin is what it is but that she just didn't see any  
3 warts.

4 Q. In fact, Dr. Irwin, if we can look at the middle of the  
09:25 5 page, what is this word right here?

6 A. Erythematous, slight erythema.

7 Q. We've heard that word several times now throughout the last  
8 six months of Ms. Jones' records. What does that mean again?

9 A. Just redness.

09:26 10 MS. HOLCOMBE: Can we put up Bortz 247, please? And  
11 can we go to Page 3 of this document?

12 BY MS. HOLCOMBE:

13 Q. Dr. Irwin, I will give you my copy because I only have one.  
14 *(Discussion off the record)*

09:26 15 BY MS. HOLCOMBE:

16 Q. Dr. Irwin, I would like to call your attention to  
17 July 19th, 2005. How soon before Ms. Jones left for Iraq would  
18 you say that is, that date is?

19 A. Well, I guess six days.

09:26 20 Q. And based on reviewing these Walgreen's records, what did  
21 she fill -- what prescription did she fill about five days  
22 before she left?

23 A. Well, she refilled -- or she filled a prescription for  
24 imiquimod or Aldara.

09:27 25 Q. And just to remind the jury, what exactly are the effects

09:27 1 of using Aldara cream?

2 A. Well, Aldara does cause terrible skin irritation and  
3 burning and that's what it causes.

4 MS. HOLCOMBE: Can we put up Joint 105, please?

09:27 5 Wendy, can we go back to Jones 000032?

6 BY MS. HOLCOMBE:

7 Q. Dr. Irwin --

8 MS. HOLCOMBE: Oh, Wendy, can we enlarge just the  
9 diagram for purposes of Dr. Irwin showing us several things?

09:27 10 Thank you.

11 BY MS. HOLCOMBE:

12 Q. Dr. Irwin, when looking at this diagram, could you show me  
13 where -- or using this laser would actually probably be more  
14 helpful on the big screen. Could you show the jury where,  
09:28 15 based on the last six months of records that we've reviewed,  
16 Ms. Jones experienced condyloma?

17 A. Well, her condyloma were below the introitus from the labia  
18 minora down to the perirectal area. So, in all of this area  
19 were where the condyloma were.

09:28 20 Q. And using the same pointer, where, when you typically treat  
21 condyloma, would you apply the Aldara cream?

22 A. Well, the Aldara cream -- because this virus is in the  
23 normal skin, so generally patients are instructed to apply the  
24 Aldara cream to the whole perineum. I mean, literally from the  
09:28 25 clitoris up here down to the rectal area. Because even though



09:28 1 there may be a condyloma here, there's probably virus here.

2 Q. And based on reviewing the surgery records, where was  
3 surgery performed -- I believe both pulse laser and the  
4 electrocautery and the cryocautery, where were those surgeries  
09:29 5 performed on Ms. Jones?

6 A. Well, all of that was between the posterior fourchette here  
7 and down to the rectum. So, in this general area here  
8 (indicating).

9 Q. Now, Dr. Irwin, I want to flash forward to July 28th, 2005,  
09:29 10 with Dr. Schulz, who examined Ms. Jones hours after she alleged  
11 this incident that occurred. Where, based on your review of  
12 the records, did Ms. Schulz [sic] find that Ms. Jones had  
13 experienced fissures?

14 A. Well, what I -- it appears that Dr. Schulz drew in here a  
09:29 15 little fissure here, some little fissures down from the vaginal  
16 introitus, and then some fissures in the perirectal area.

17 Q. I'm almost done, Dr. Irwin.

18 MS. HOLCOMBE: Oh, could we put up Bortz 191, please?

19 BY MS. HOLCOMBE:

09:30 20 Q. Dr. Irwin, what is the date of this visit?

21 A. This is eight -- August the 2nd of '05.

22 Q. About how many days after Ms. Jones alleged this sexual  
23 assault did this visit take place?

24 A. Well, I guess four days or five days.

09:30 25 Q. May I borrow your pointer?

09:30

1 A. Oh, yes.

2 Q. Thank you.

3 MS. HOLCOMBE: And if we could look to the middle of  
4 the page right about here and blow that up. Thank you. In the  
5 middle section.

6 BY MS. HOLCOMBE:

7 Q. Dr. Irwin, can you please tell the jury what it is that  
8 Dr. Scott observed and found when she examined Ms. Jones only  
9 five days after the alleged incident?

09:31

10 A. Well, she says: The pelvic exam EFG, which is external  
11 female genitalia, is erythematous and slight edema -- that's  
12 would be swelling. No lacerations, vagina normal, cervix  
13 normal.

14 Q. And, Dr. Irwin, there's a word right here that I've had you  
15 say several times today. What is this word again?

16 A. "Erythematous."

17 Q. And, again, what does it mean?

18 A. Redness.

19 Q. And specifically also right here, what did Dr. Scott find  
20 when examining Ms. Jones only five days after the alleged  
21 incident?

22 A. No lacerations.

23 Q. And based on your experience and knowledge dealing with  
24 patients, what does a laceration typically mean to you?

09:31

25 A. Well, a laceration implies to me that it's a deeper cut or

09:32 1 tear than a fissure; but she didn't see any lacerations.

2 Q. And again, fissures, as you said earlier, how often can  
3 they occur with just a normal healthy woman who has -- is  
4 experiencing consensual sex?

09:32 5 A. They occur fairly frequently, I think.

6 Q. So, Dr. Irwin, based on all of these records and all of the  
7 things that you have reviewed and your expertise and your  
8 knowledge, do you have any opinions as to the findings that  
9 Dr. Schulz found on July 28th, 2005, with regards to the  
09:32 10 fissures in Ms. Jones' lower genital tract and where they could  
11 have come from?

12 A. Well, I think they certainly could have come from  
13 consensual vaginal intercourse, they could have come from a  
14 sexual assault.

09:32 15 MS. HOLCOMBE: No further questions.

16 THE COURT: Mr. Kelly, do you wish to inquire?

17 Oh, Ms. Cullen.

18 MR. KELLY: I didn't think it was my turn yet. Yes,  
19 Judge.

09:33 20 THE COURT: I think it was, but you can certainly  
21 change the normal order. That's fine.

22 MS. CULLEN: Thank you, your Honor.

23 **CROSS-EXAMINATION**

24 BY MS. CULLEN:

09:33 25 Q. Dr. Irwin, my name is Sharon Cullen; and I represent

09:33 1 Charles Bortz, the other defendant in this case.

2 A. Yes.

3 Q. I have just a couple of little follow-up questions that I  
4 wanted to ask you.

09:33 5 MS. CULLEN: Wendy, would you pull up Bortz 173 again  
6 for me, please? And could we highlight -- could we highlight  
7 this part right here? Can we enlarge that part?

8 BY MS. CULLEN:

9 Q. Doctor, the portion that remains highlighted, where it says  
09:34 10 "gait limited, guarded," why is that recorded by a gynecologist  
11 in the record?

12 A. Well, these patients that have these severe primary  
13 herpetic outbreak, they're very, very, very tender. It's very  
14 hard for them to walk and that's -- and, you know, because, you  
09:34 15 know, walking irritates that skin.

16 Q. Any time that skin is irritated, what would you expect to  
17 see in the way of gait limitation?

18 A. Well, small steps, I mean, you know, shuffling.

19 Q. Would that be true of -- would that be the result you would  
09:34 20 expect from any sort of injury to that particular area, I mean,  
21 other than herpes?

22 A. Well, sure. I mean, any kind of vulvar/perineal injury,  
23 that skin -- when a woman walks, that skin moves. And if it's  
24 injured, it would hurt and it would limit your gait -- or, you  
09:35 25 know, you would tend to shuffle or take small steps.

09:35 1 MS. CULLEN: Could we have Bortz 181 again, please?  
2 And blow up for us, this area.

3 BY MS. CULLEN:

4 Q. Doctor, this is just to put it in context. This is the  
09:35 5 visit when you had noted that Ms. Jones had come back in and  
6 requested TCA be applied again?

7 A. Yes.

8 Q. What I wanted to confirm with you, sir, is can you look at  
9 this record and confirm for us whether or not, in fact,

09:36 10 Dr. Scott applied TCA on that day?

11 A. Well, if -- she wrote it in the medical records that she  
12 applied TCA.

13 Q. She did, in fact, apply it?

14 A. Yes.

09:36 15 Q. How often can TCA be applied?

16 A. Oh, you can do it a lot. It's just a matter of how much  
17 the patient will allow you to do it.

18 Q. So, the fact that Dr. Scott had applied TCA on April 12th  
19 would not -- it doesn't surprise you that she would do it again  
09:36 20 in May?

21 A. Not at all.

22 Q. When the acid is applied, as I understand your testimony,  
23 it burns?

24 A. Oh, yes.

09:36 25 Q. How long does it take for the burns to that tissue to heal?

09:36 1 A. Well, the physical sense of the patient's sense of burning,  
2 it usually goes away pretty quickly. But then what happens  
3 over the next few days is that skin ulcerates and basically  
4 sloughs off. They have discomfort for some weeks afterwards.

09:37 5 MS. CULLEN: Could we have Joint Exhibit 105 again,  
6 please? And, Wendy, if you would blow up the illustration?  
7 Yes.

8 BY MS. CULLEN:

9 Q. I just wanted to confirm with you, you pointed out to us  
09:37 10 where Dr. Schulz marked the fissures that she found on the  
11 morning of July 28; and you've also indicated for us where  
12 Dr. Scott would have applied the TCA and performed, you know,  
13 various surgeries.

14 What I wanted to confirm with you is this: In  
09:37 15 looking at this drawing showing the fissures, is the location  
16 where all this treatment was given to Ms. Jones the same  
17 location as the fissures?

18 A. Yes.

19 MS. CULLEN: You can take it down now. Thank you.

09:38 20 BY MS. CULLEN:

21 Q. You've testified that even a normal, healthy woman can  
22 develop fissures. Talk to us about a woman with the immediate  
23 history of Ms. Jones, that you have just gone through at some  
24 length, with -- how much force would it take to create fissures  
09:38 25 in a woman who's got the history that Ms. Jones had.

09:38 1 A. Well, I think probably very little, to tell you the truth.

2 Q. What kinds of activities of your patients have you seen

3 that you believe could cause the sort of fissures noted in

4 Dr. Schulz' records on a patient with the history of Ms. Jones?

09:38 5 A. Well, I think probably anything from rubbing or wiping the

6 area to sexual intercourse to any kind of -- kind of physical

7 trauma of the least bit would probably cause them, given those

8 circumstances.

9 MS. CULLEN: Thank you, Doctor. Thank you very much.

09:39 10 THE COURT: Do you need a break, Doctor?

11 THE WITNESS: No. I'm fine.

12 THE COURT: Anybody else need a break yet? Okay.

13 MR. KELLY: May I proceed, your Honor?

14 THE COURT: Yes. Let's keep on marching.

09:39 15 **CROSS-EXAMINATION**

16 BY MR. KELLY:

17 Q. Doctor, good morning. You and I met the first time just an

18 hour or so ago, right?

19 A. Yes.

09:39 20 Q. You would agree with me, would you not, that a physician

21 with the best, most reliable information is the physician who's

22 actually examined the patient? Would you agree with that?

23 A. That -- well, yes. I mean, the physician that's seeing the

24 patient is seeing the patient.

09:40 25 Q. And you would also agree with me that a physician who has a

09:40 1 history with a particular patient is in a better position to  
2 offer opinions about the medical condition of that patient than  
3 one who does not have a long-standing history with that  
4 patient. Isn't that true?

09:40 5 A. I don't necessarily think that's so, no.

6 Q. Okay. You've never met Ms. Jones?

7 A. No, I have not.

8 Q. And you -- if I understand correctly, you've not evaluated  
9 a sexual assault victim in the acute phase since your residency  
09:40 10 in Ben Taub back in the 1970's. Isn't that right?

11 A. That's correct.

12 Q. Okay. And your -- the only thing that you've authored  
13 related to sexually transmitted diseases was a publication that  
14 you authored, again, back in the 1970's. Is that also true,  
09:40 15 sir?

16 A. Well, I think that there was one -- well, in the -- well,  
17 that's -- yeah, in 1988, that endocervical brush paper was an  
18 evaluation of cervical dysplasia, sexually transmitted disease  
19 in '88.

09:41 20 Q. All right. I do want to ask you about cervical dysplasia  
21 when we get to it in a moment, sir.

22 The patients that you treat that have reported to  
23 you that they have been sexually assaulted -- you said you  
24 treat some of those patients, sir?

09:41 25 A. Yes.



09:41 1 Q. They don't all report to authorities, do they?

2 A. No, not at all, that's true.

3 Q. In fact, most of them don't report to authorities, do they?

4 A. I don't know that, but I've heard that that's true.

09:41 5 Q. Now, I want to make sure. You were hired by Kellogg

6 Brown & Root to come in here and offer your opinions, true?

7 A. Yes.

8 Q. And by my math, sir, I think you're going to charge them

9 roughly \$10,000 for that opinion?

09:41 10 A. Well, I doubt that that would come up to that, but maybe.

11 Q. And if I understand what you've reviewed, Doctor, you

12 reviewed Dr. Schulz' records?

13 A. Yes, I did.

14 Q. And you reviewed Dr. Schulz' deposition?

09:42 15 A. I did.

16 Q. All right. Did you note in Dr. Schulz' deposition that the

17 photographs from the rape kit that she took were not available

18 even when you authored your report in this case?

19 A. Yes, I knew that. I said that in my report, I believe.

09:42 20 Q. All right. And I think you probably saw at -- during

21 Dr. Schulz' deposition that she didn't know where parts of the

22 rape kit were at that time. Did you read that?

23 A. I don't remember that specifically.

24 Q. Well, she certainly didn't know where the photographs were,

09:42 25 right?

09:42

1 A. I don't -- again, I don't know.

2 Q. Did you read where Dr. Schulz testified that she only took  
3 photographs of rape victims if there was something worth taking  
4 a photograph of?

09:42

5 A. I don't remember that comment.

6 Q. Okay. Would you agree with that?

7 A. She only took -- repeat the question.

8 Q. Is it your practice, Doctor, if you're going to evaluate a  
9 patient, that you only take photographs if there's something  
10 worth taking a photograph of?

09:43

11 A. First off, I don't take photographs of patients.

12 Q. That's because you don't do the rape examinations yourself?

13 A. I don't do the initial rape examination myself, that's  
14 correct.

09:43

15 Q. Doctor, in your report you were good enough to provide a  
16 list of cases where you have provided expert services since  
17 2006. Do you recall that?

18 A. Yes.

19 Q. I want to go through those real quickly, if we could, sir.

09:43

20  
21 You were hired by the defendant in Miller versus  
22 Gee in 2007, true?

23 A. You know, frankly, I don't remember whether it was the  
24 defendant or plaintiff. I don't remember the case, frankly.

09:43

25 Q. You were also hired by the defendant in Denman versus

09:43

1 Beckner in 2007, were you not, sir?

2 A. That could be. Again, I don't remember whether it was the  
3 defendant or the plaintiff.

4 Q. You were hired by the defendant again in Dawson versus

09:44

5 Maryland in 2007, were you not, sir?

6 A. I don't recall who it was for.

7 Q. You were hired by the defendant again in Wheaton versus

8 Hawkinson in 2007. Isn't that true?

9 A. I don't recall.

09:44

10 Q. You were hired by the defendant again in Swindel versus

11 Northland Women's Healthcare, et al, in 2007. Isn't that true?

12 A. The -- that -- I don't recall, but that may have been a  
13 plaintiff case. But I don't remember.

14 Q. You were hired by the defendant in Seabrooks versus Mesaw

09:44

15 in 2007, true?

16 A. I believe that's true, yes.

17 Q. You were hired by the defendant in Carmen versus United

18 States, true?

19 A. Yes.

09:44

20 Q. You were hired by the defendant in Herrera versus Hawkins

21 in 2008, true?

22 A. I don't recall.

23 Q. You were hired by the defendant in Talavera versus Ward in

24 2008, true?

09:44

25 A. I believe that's true, yes.

09:45 1 Q. You were hired by the defendant in Stutts versus Columbia,  
2 et al. Isn't that true?  
3 A. I don't recall that one.  
4 Q. It's on your list, is it not?  
09:45 5 A. Pardon me?  
6 Q. It is on your list?  
7 A. It is on the list, yes.  
8 MS. HOLCOMBE: Objection, your Honor, that's a  
9 mischaracterization. It's not on his list whether he was for  
09:45 10 plaintiff or defendant. It just says that he was an expert in  
11 that case. The witness doesn't know.  
12 THE COURT: I don't think Mr. Kelly suggests  
13 differently.  
14 So everybody understands, he's just listed the  
09:45 15 cases in which he's testified for one side or the other. Okay.  
16 BY MR. KELLY:  
17 Q. You were hired by the defendant in Powell versus Blake,  
18 true?  
19 A. Well, I don't remember.  
09:45 20 Q. And you were hired by the defendant in Lucky versus Cullen  
21 in 2009. Is that true?  
22 A. I believe that's true, yes.  
23 Q. You were hired by the defendant in Nitcher versus Michael  
24 Katz, MD, in 2009. Is that true, sir?  
09:45 25 A. That was actually for the plaintiffs.

09:45

1 Q. You were hired by the plaintiffs in that?

2 A. I believe so, yes.

3 Q. You were hired by the defendant in Johnson versus Ching and  
4 Ladin in 2009, true?

09:46

5 A. I believe that's so, yes.

6 Q. You were hired by the defendant in Davis versus Christus in  
7 2009, true?

8 A. I don't remember that one.

9 Q. You were hired by the defendant in Boxdale versus Sherlock  
10 in 2009, true?

09:46

11 A. I think that one was for the plaintiffs.

12 Q. You were hired by the defendant in Smith versus Wright in  
13 2010. Isn't that true?

14 A. I think that was the plaintiff.

09:46

15 Q. Okay. You were hired by the defendant in Joan versus  
16 Halliburton/KBR, et al?

17 A. Yes, sir.

18 Q. Okay. When Jamie arrived for the rape kit examination in  
19 this case, that was 14 and a half hours after the attack in  
20 this case. Is that right?

09:46

21 A. I haven't done the math.

22 Q. You did read Dr. Schulz' deposition to that effect, though?

23 A. I don't recall her specific testimony.

24 Q. At that time, Jamie reported that she did not know if she  
25 had been vaginally penetrated for certain, true?

09:46

09:47

1 A. Again, I don't remember that.

2 Q. She didn't know if she had been anally penetrated, true?

3 A. I don't know that. I don't recall that.

09:47

4 Q. She didn't know if there had been oral sex. Isn't that  
5 true?

6 A. Again, I don't recall.

7 Q. Do you recall that she hadn't consented to intercourse in  
8 72 hours?

09:47

9 MS. HOLCOMBE: Objection, your Honor. That's not --  
10 that's what we're here to decide, is whether or not there was  
11 consent or not.

12 THE COURT: You might rephrase the question.

13 MR. KELLY: Sure.

14 BY MR. KELLY:

09:47

15 Q. You certainly recall that she reported in the medical  
16 records with Dr. Schulz that she had not consented to sexual  
17 intercourse in 72 hours, true?

18 A. Well, again, I don't remember that specifically.

19 Q. Okay. She had urinated, true?

09:47

20 A. I believe that to be so, yes.

21 Q. Now, Dr. Schulz noted erythema, right?

22 A. Yes, she did.

23 Q. Dr. Schulz noted extreme erythema, didn't she?

24 A. Let me see what she said.

09:48

25 She says: Very erythematous.

09:48 1 Q. Now, we've looked at a lot of records put up on the board  
2 by counsel for KBR and counsel for Mr. Bortz; and nowhere did  
3 it say "very erythematous," did it?  
4 A. That's a subjective, obviously, adjective to describe  
09:48 5 "erythema."  
6 Q. No one said "very erythematous" prior to Dr. Schulz, did  
7 they?  
8 A. Well, let me look.  
9 Q. Please take your time, Doctor.  
09:48 10 A. Thank you.  
11 Right. No, they don't. They just say  
12 erythematous.  
13 Q. In fact, the only adjective ever used to describe the  
14 erythema or redness prior to July the 28th, 2005, is the word  
09:49 15 "slight." Isn't that true, Doctor?  
16 A. I recall that, yes.  
17 Q. Right. So, she may have had slight redness prior to  
18 reporting the sexual assault; but she had never had a very  
19 erythematous finding prior to that date. Isn't that true?  
09:49 20 A. That's correct.  
21 Q. All right. Now, Dr. Schulz also noted fissuring, true?  
22 A. Yes.  
23 Q. She noted fissuring at the introitus --  
24 A. Yes.  
09:50 25 Q. -- the perineum and the anus, true?

09:50

1 A. Yes, that's correct.

2 Q. All right. She noted bruising on the left wrist and a  
3 scratch on the right wrist, true?

4 A. Let me pull that up here. I think that's --

09:50

5 Now go ahead. She reported -- I see a little  
6 drawing. Let's see. I can't -- the writing is so small.  
7 There's a little arrow pointing to the right -- what appears to  
8 be the forearm and then several little arrows pointing to -- I  
9 guess that word is "bruises" on the right below the knee and  
10 then on the left above the knee and on the right above the  
11 knee.

09:50

12 Q. She also noted "copious mucoid discharge," didn't she?

13 A. Yes.

14 Q. Now, given the history and the admission by Mr. Bortz that  
15 he at least had sex with Ms. Jones, the most likely source of  
16 that copious mucoid discharge is semen, true?

09:51

17 A. Well, I don't know about that. Again, it could -- it may  
18 or may not have been. I mean, vaginal leucorrhea or vaginal  
19 discharge is common no matter what, even copious vaginal  
20 discharge.

09:51

21 Q. Well, Dr. Schulz did collect semen samples from Jamie's  
22 vagina, true?

23 A. I believe, yes.

24 Q. Given that finding and the admission by Mr. Bortz that he  
25 had sex with Ms. Jones, would you not agree with me that the

09:51



09:51 1 most likely copious mucoid discharge found here was Mr. Bortz'  
2 semen?

3 A. No. No. I mean, the average ejaculate volume in a male is  
4 just 3 ml's. I mean, that's less than a half of a teaspoon.  
09:51 5 So, I wouldn't describe that as "copious"; and the fact of the  
6 matter is if she's been walking around, in fact, most of the  
7 ejaculate has already leaked out.

8 MR. KELLY: Let me approach very quickly.  
9 *(Discussion off the record)*

09:52 10 BY MR. KELLY:

11 Q. You mentioned the bruises that were found on Ms. Jones'  
12 legs. Those are certainly things that are appropriate to note  
13 in a rape kit examination. Is that true, Doctor?

14 A. Certainly.

09:52 15 Q. And one of the reasons that's true is that they are  
16 evidence of trauma, true?

17 A. A bruise certainly can be evidence of trauma.

18 Q. And even a small bruise is evidence of some trauma, true?

19 A. True.

09:53 20 Q. And it's sort of like a fingerprint on a crime scene, isn't  
21 it?

22 A. I don't know. I mean, I don't --

23 THE COURT: That may be out of his field.

24 BY MR. KELLY:

09:53 25 Q. These findings -- I think you've said these findings are

09:53 1 consistent at least with sexual assault, true?

2 A. Sure.

3 Q. Now, did you read in Dr. Schulz' deposition that she handed  
4 the rape kit off to -- the rape kit was handed off to KBR  
09:53 5 security, true? Did you read that?

6 A. Well, if I did, I didn't pay any attention to it.

7 Q. All right. Would you agree with Dr. Schulz that Jamie was  
8 very red and raw, with the fissures making her quite sore?

9 A. Well, she describes that she was very erythematous and she  
09:54 10 had fissures.

11 Q. So, do you agree with that testimony then, Doctor?

12 A. That she was -- well, I don't --

13 Q. This is a quote from -- well, this is what I believe is a  
14 quote from Dr. Schulz' testimony: She was very red and raw,  
09:54 15 with the fissures making her quite sore.

16 Do you agree with that?

17 A. If that's what she said, that's what she said. I wasn't  
18 there.

19 Q. Now, you gave us a number of reasons or a number of  
09:54 20 possible causes of fissures. I think you said it can be from  
21 consensual sex, non-consensual sex, or even no sex, right?

22 A. That's correct.

23 Q. All right. Now, again, in this case Bortz admitted sex,  
24 right?

09:54 25 A. I believe that's so, yes.

09:54 1 Q. And there's certainly no evidence that there were any  
2 bicycles around, right?

3 A. I don't think so.

4 Q. All right. Now, fissures can bleed, right?

09:54 5 A. Fissures usually do not bleed because it's only in the  
6 epidermis. So, usually they do not bleed.

7 Q. But they can bleed, can't they?

8 A. Well, I would say that if it's -- there's bleeding, it's  
9 probably more than a fissure.

09:55 10 Q. It would be more like a laceration then?

11 A. Yes.

12 Q. And, really, when we talk about the difference between a  
13 fissure and a laceration, we're only just talking about an  
14 issue of degree, aren't we?

09:55 15 A. I think so, yes.

16 Q. So -- and the bleeding for a laceration in the vaginal area  
17 would probably not be a great deal of blood; but you would see  
18 it when you wiped, right?

19 A. Possibly, yes.

09:55 20 Q. Okay. Now, Doctor, as I typically do, I fumble with my  
21 exhibits a little bit.

22 MR. KELLY: But I would like to approach with an  
23 exhibit, if I may, your Honor?

24 THE COURT: All right.

09:55 25 BY MR. KELLY:

09:55 1 Q. Do you recognize what I've placed on the board, Doctor?

2 A. Yes.

3 Q. And what I would like to ask you, Doctor, is: As you see  
4 the diagram there, you do note that it describes a number of  
09:56 5 the things that are talked about. But I just want to ask you  
6 if -- as you look at that diagram, Doctor -- I'm going to let  
7 counsel know what I am doing.

8 MR. KELLY: I'm going to approach him with this  
9 (indicating).

09:56 10 MS. HOLCOMBE: Your Honor, may we approach?

11 (*At sidebar with all counsel*)

12 MR. KELLY: This is a medical diagram, your Honor.  
13 And I'm going to ask him if it fairly and accurately represents  
14 what he's looking at in the image that he's got on the board.  
09:56 15 If he tells me it doesn't, I won't use it. If he tells me it  
16 does --

17 MS. CULLEN: Those are bloody looking cracks, your  
18 Honor. And I would like to point out he's already used one  
19 medical diagram in this case that was totally inaccurate, as  
09:57 20 Dr. Ciaravino testified yesterday.

21 MR. KELLY: If he tells me it's incorrect, it doesn't  
22 come in. If he tells me it is, I think it does.

23 MS. HOLCOMBE: Your Honor, I would add that this is  
24 Mr. Kelly's interpretation of Dr. Schulz' records.

09:57 25 THE COURT: Have you not seen this before?

09:57 1 MS. HOLCOMBE: No, I've never seen this before.

2 MS. CULLEN: Neither has the expert.

3 THE COURT: No, I don't think so.

4 (*In open court*)

09:57 5 BY MR. KELLY:

6 Q. The copious mucoid discharge is not drawn into that  
7 diagram, is it, Doctor?

8 A. No.

9 Q. I think you said that injury to this area, the vaginal  
09:57 10 area, injuries to this area tend to heal more quickly than  
11 other parts of the body?

12 A. Probably so.

13 Q. Okay. You also indicated, Doctor -- and I want to talk  
14 about the fissures for a moment.

09:58 15 One of the things that you said, one of the  
16 body's natural ways -- one of the female body's natural ways of  
17 reducing the likelihood of fissures is, I think you said,  
18 sexual arousal and lubrication, true?

19 A. I don't know that I said that. I said that -- no, I don't  
09:58 20 recall saying that.

21 Q. Okay. If you take my word for it that I wrote it down as  
22 you did, do you disagree with that statement, Doctor?

23 A. Say it again.

24 Q. Sure. That sexual arousal and lubrication can minimize the  
09:58 25 likelihood of fissures. Is that true?

09:58

1 A. Well, the -- no, I'm sure I didn't say that. Sexual  
2 arousal wouldn't have anything to do with fissures.

3 Q. Okay. Would lubrication have anything to do with fissures?

4 A. Sexual -- yeah, sexual lubrication certainly can.

09:59

5 Q. And sexual lubrication comes from sexual arousal. Isn't  
6 that true?

7 A. That's true.

8 Q. And sexual arousal is done with foreplay. I think you did  
9 mention foreplay, didn't you?

09:59

10 A. Yes.

11 Q. Okay. I want to also ask you -- I think you made the  
12 comment, Doctor, that -- and I just want to make sure I  
13 understood the implication of it correctly. I think you said  
14 that the surgeries that Ms. Jones had had at the -- the cryo  
15 things and the ointments, the Aldara cream, all of that, I  
16 think you said that was like World War III?

09:59

17 A. I did.

18 Q. And I think you said that even though Dr. Scott noted that  
19 the condyloma had resolved just a few days before Jamie left  
20 for Iraq, you -- I think you said that she would have still  
21 been irritated, I believe was the word, and sore. Is that  
22 right?

09:59

23 A. Well, certainly -- certainly could have been.

24 Q. Okay. And certainly if she's irritated and sore in the  
25 vaginal area, sexual intercourse is not as likely to be

10:00

10:00 1 consented to, is it?

2 A. Well, I don't know that that's true at all.

3 Q. Okay. Certainly would seem reasonable, wouldn't it, that a

4 woman who is sore and agitated in her vaginal area wouldn't

10:00 5 consent to sexual intercourse?

6 A. I don't think -- I've been in practice for 33 years. I've

7 seen patients have sexual intercourse when God knows what was

8 going on. So, believe you me, I don't think it has much to do

9 with it.

10:00 10 Q. You talked about the HPV virus causing condyloma. Do you

11 recall that?

12 A. Yes.

13 Q. Now, when the HPV virus causes condyloma, that's a certain

14 strand of HPV, isn't it?

10:01 15 A. Certain strain or genotype.

16 Q. Okay. And what genotype or strain is that? I think I

17 misspoke and called it strand. What strain is that?

18 A. Either Type 6 or Type 11.

19 Q. So, 6 or 11 causes condyloma. Now, does that also cause

10:01 20 precancerous cells?

21 A. It very rarely does.

22 Q. What strain more frequently causes precancerous cells?

23 A. Well, there are actually about 13 types that are

24 responsible for precancerous cells, 16, 18, 31, 35, 38, 42.

10:01 25 Q. But not 6 and 11?

10:01

1 A. 6 and 11 generally do not.

2 Q. Is the strain that causes ASCUS the type that causes the  
3 cancer, the precancer cells?

10:01

4 A. Well, not necessarily. ASCUS -- ASCUS can be caused by any  
5 of the genotypes of HPV.

6 Q. Okay. But as far as the precancer, that's something  
7 from -- not from typically 6 or 11?

8 A. 6 and 11 can cause precancer cells. They do not cause --  
9 absolutely do not cause vulvar or cervical cancer.

10:02

10 Q. Okay. You made a comment; and I wrote this one down, too.  
11 I just want to be sure I'm correct with it, Doctor. You said  
12 that condyloma or genital warts had a particular appearance.

13 Do you recall saying that?

14 A. Yes.

10:02

15 Q. And since condyloma and genital warts have a particular  
16 appearance, Dr. Scott, who was treating Ms. Jones, would  
17 certainly have been able to recognize condyloma or genital  
18 warts a few days prior to her departure for Iraq if they had  
19 been present, fair?

10:02

20 A. I believe so, yes.

21 Q. All right. You were asked about Bortz 180. And I -- I  
22 just want to point something out. First of all, Doctor, this  
23 was three months before Jamie left for Iraq, true?

24 A. That is 4-22, yes.

10:03

25 Q. And it says at that time that the patient was treated with



10:03

1 Aldara, true?

2 A. Yes.

3 Q. And you said that the irritation from Aldara cream lasted  
4 four to five days, right?

10:03

5 A. It can.

6 Q. Okay.

7 A. Three or four days, four to five.

8 Q. And then you were asked about Ms. Jones being erythematous  
9 and I have trouble with that word, but basically being red,  
10 right?

10:03

11 A. Erythematous.

12 Q. Thank you.

13 Now, in May of 2005, if we look at Bortz 181 --

14 *(Discussion off the record)*

10:04

15 BY MR. KELLY:

16 Q. If we look here, it says no erythema and no edema in May of  
17 2005, true?

18 A. It says -- it says no edema.

19 Q. And there's no --

10:04

20 A. Says no edema.

21 Q. And there's no erythema listed at all?

22 A. Yeah, erythema is not listed.

23 Q. All right. She had the condyloma surgery, the laser  
24 surgery about eight weeks before she left for Iraq. You agree  
25 with me on that, don't you?

10:04

10:04

1 A. I do.

2 Q. Okay. And then a week later, on June 3rd of 2005 --

3 MR. KELLY: Which is Bortz 184, Bill.

4 BY MR. KELLY:

10:05

5 Q. -- Dr. Scott, at this time, notes no edema, no ulcers. Is  
6 that true?

7 A. She -- those things aren't mentioned. So, I'm assuming  
8 that they weren't present.

10:05

9 Q. She's status post-laser surgery with the area healing well,  
10 true?

11 A. That's correct.

12 Q. Five days before Jamie leaves for Iraq -- I'm sorry, five  
13 days before this incident -- no, I'm sorry, five days before  
14 she leaves for Iraq, Jamie is again examined.

10:05

15 MR. KELLY: Bortz 188, Bill.

16 BY MR. KELLY:

17 Q. And that's where we see that the condyloma is resolved and  
18 there is slight redness, true?

19 A. That's correct.

10:06

20 Q. Do you agree with the premise, Doctor, that if fissures are  
21 caused by trauma, that the more severe the trauma, the more  
22 significant the fissures, as a general concept?

23 A. Well, I really don't know how to answer that. I guess so.

10:06

24 Q. And you also don't disagree with Dr. Schulz' evaluation and  
25 finding in her deposition that the fissures in this case were

10:06

1 most likely caused by sexual penetration?

2 A. That was her opinion. I think that that's what she said.

3 Q. Do you disagree with it, Doctor?

4 A. I don't have any basis to agree with it or disagree with  
10:06 5 it.

6 Q. In fact, she was the physician who first saw Jamie after  
7 this assault, true?

8 A. That's true.

9 Q. Did you notice that Dr. Schulz admitted in her deposition  
10:07 10 that she told Jamie that it looked like she had been penetrated  
11 both anally and vaginally?

12 A. I don't recall that.

13 Q. You don't recall that?

14 A. No.

10:07

15 Q. You disagree with it?

16 A. I just don't recall it.

17 Q. Well, do you disagree with the statement: Does it appear  
18 from the findings, as you've reviewed them, that Jamie was  
19 penetrated both anally and vaginally?

10:07

20 A. I don't think the physical exam would say that.

21 Q. Okay. But again, Dr. Schulz did that physical exam, not  
22 you?

23 A. That's correct.

24 Q. And you agree with me that the doctor who examines the  
10:07 25 patient is in a better position to make findings about the

10:07 1 patient's physical condition than a doctor who's only reviewed  
2 records, true?

3 A. Well, if she wrote down what she saw, then she wrote down  
4 what she saw.

10:07 5 Q. Are medical records 100 percent accurate 100 percent of the  
6 time, Doctor?

7 A. I don't think so.

8 Q. In fact, they really are just meant as a reminder for the  
9 person who made them, aren't they?

10:07 10 A. I hope not. I mean, they're generally considered to be a  
11 true and correct representation of what's going on so that any  
12 subsequent treating physician, whether that doctor or another  
13 doctor, can manage the patient.

14 Q. I asked you this earlier, Doctor. But Dr. Schulz testified  
10:08 15 in her deposition that when there's a lot of foreplay, it  
16 reduces the likelihood of fissures. Do you disagree with that  
17 statement?

18 A. Well, I think that's just an opinion. I don't have any --  
19 I don't disagree or agree with it particularly.

10:08 20 Q. Well, you're here to offer your expert opinions upon --  
21 about fissures, right, Doctor?

22 A. Yes.

23 Q. And so, do you have an opinion about whether or not  
24 foreplay reduces the likelihood?

10:08 25 A. Well, I don't necessarily think so. Foreplay could cause

10:08 1 them.

2 Q. All right. You were asked about Dr. Scott's records five  
3 days after this assault on August 2nd, 2005. Do you recall  
4 that?

10:09 5 A. Yes.

6 Q. Have you ever reviewed Dr. Scott's letter to a State  
7 Department official by the name of Lynn Falanga?

8 A. No.

9 Q. Let's do that.

10:09 10 MR. KELLY: It's KBR 143. And if we could just blow  
11 that up, Bill.

12 BY MR. KELLY:

13 Q. Now, Dr. Scott has testified to this jury, Doctor, that she  
14 wrote this letter to Lynn Falanga and the part where it says  
10:09 15 that she had a small, superficial laceration on the vaginal  
16 opening, she's referring to the same examination that you  
17 referred to earlier, right?

18 A. So it would appear.

19 Q. Now, Dr. Scott agreed with us that this letter is  
10:10 20 inconsistent with her record. You agree with that, right?

21 A. It is.

22 Q. And she explained to us, Doctor, that the reason that she  
23 wrote what she wrote in her record was that there was nothing  
24 for her to repair. But then when reporting to Ms. Falanga  
10:10 25 that -- she reported that there was a superficial laceration.

10:10 1 Let me just ask it to you this way, Doctor. Now  
2 knowing that Dr. Scott has testified that she did, in fact, see  
3 a small superficial laceration on the right side of the  
4 introitus -- I know it doesn't say that in the letter, just  
10:10 5 accept my representation that's how she testified -- if you  
6 accept my representation that that's how she testified, Doctor,  
7 would you agree with me that that is, in fact, consistent with  
8 sexual trauma or at least sexual intercourse?

9 A. Well, but she says on her exam -- she specifically says  
10:11 10 that the vagina is normal. And she specifically says no  
11 lacerations. It wasn't like she was silent on the matter on  
12 her exam.

13 Q. I'm not asking you to determine, Doctor, whether her exam  
14 is more accurate than her letter. I'm asking you to assume  
10:11 15 with me, for purposes of this question, that the letter is  
16 accurate. Okay? Call that a hypothetical if you want.

17 If you assume with me that the letter is accurate  
18 and not the record, would you agree with me, then, that that  
19 finding was consistent with sexual intercourse?

10:11 20 A. Could have been sexual intercourse, could have been  
21 anything.

22 Q. All right. She did note that Jamie was still erythematous,  
23 true?

24 A. Erythematous, yes.

10:11 25 THE COURT: I think we've covered that point. I'm not

1 sure I understand the importance of it.

2 MR. KELLY: Not in the post-trauma, your Honor. We've  
3 covered it pre-trauma. I've not covered it with him  
4 post-trauma.

5 THE COURT: Okay.

6 BY MR. KELLY:

7 Q. She was still swollen, true?

8 A. Slight edema, yes.

9 Q. Your report, as I understood it, Doctor, explained that  
10 these findings were possibly consistent with the laser surgery.  
11 Is that right?

12 A. What findings?

13 Q. The findings of erythema, swelling, and the laceration.

14 A. What I wrote in my report was that the laser surgery and  
15 all of her treatment from the trichloroacetic acid to the  
16 Aldara to the cryosurgery to the laser certainly weakens the  
17 perineal and vulvar skin and that weakened skin is present for  
18 three to four months. That's exactly what I said.

19 Q. So, even if the condition of the skin were weakened,  
20 Doctor, that certainly doesn't rule out a sexual assault, does  
21 it?

22 A. No.

23 Q. Did you tell me that you did or did not agree with  
24 Dr. Schulz that if the laser surgery -- if the effects of the  
25 laser surgery were still being felt by Ms. Jones, that

1 intercourse would be painful?

2 A. I don't necessarily agree with that at all. It may or may  
3 not have been painful.

4 Q. All right. I noticed when you were talking about what had  
5 happened with Ms. Jones and you described it as World War III,  
6 you didn't mention sexual penetration. Why is that, Doctor?

7 A. What I was talking about was the things that had been done  
8 to her perineal skin prior to her deployment to Iraq. I didn't  
9 have -- I didn't make any comment about that because that's not  
10 what I was asked, I don't believe.

11 Q. Do you assume, Doctor, that because Ms. Jones filled her  
12 prescription for Aldara cream before she deployed to an  
13 overseas location that she used the Aldara cream?

14 A. No, I don't -- make no assumptions of that whatsoever.

15 Q. When you reviewed Dr. Schulz' deposition, Doctor, did you  
16 note that she couldn't recall the facts without reviewing her  
17 notes?

18 A. I don't recall that one way or the other.

19 Q. Would that be normal for a physician in dealing with a  
20 patient that they had seen one time, that they wouldn't be able  
21 to remember much about that patient without reviewing the  
22 medical record?

23 A. Yes.

24 Q. And therefore, the medical record has to be accurate or the  
25 information that the physician recalls later is going to be



1 inaccurate, true?

2 A. The medical record is what the doctor observed at the time;  
3 and so, certainly you would use that to -- that's what she  
4 wrote down.

5 Q. Well, I mean, because in this case Dr. Schulz said that she  
6 couldn't recall what Jamie looked like, right?

7 A. Right.

8 Q. Couldn't even recall what her hair color was, right?

9 A. I don't know.

10 Q. Okay. Do you recall that she testified that she examined  
11 at least one rape per month while she was there?

12 A. Vaguely.

13 Q. Do you know what the population of American citizens in  
14 Iraq was?

15 A. No idea.

16 Q. Did you see that Dr. Schulz actually admitted that  
17 sometimes she puts errors in her records?

18 A. She says that she puts errors in her records?

19 THE COURT: She makes errors.

20 BY MR. KELLY:

21 Q. She makes errors. I think I used the word "put," but she  
22 makes errors in her medical records on occasion?

23 A. I mean, I can understand if you made an error in a  
24 diagnosis; but it's hard for me to imagine that if you write a  
25 medical record that you're not seeing what you're writing or

10:16 1 what you're -- what your examination is. I can't imagine that  
2 there would be an error in that.

3 Q. My question, Doctor, is: Did you see that Dr. Schulz  
4 admitted that she sometimes makes errors in her medical  
10:17 5 records?

6 A. I didn't see that.

7 Q. All right. Did you notice that Dr. Schulz said that she  
8 wrote down everything that Jamie said? Did you read that part?

9 A. I don't recall that.

10:17 10 Q. Did you read the part where she says that she spoke to  
11 Jamie at length?

12 A. I don't recall that.

13 Q. Did you read the part -- it seems a little inconsistent to  
14 me, though. But did you read the part that says, "I don't make  
10:17 15 superfluous notes in my records about everything that's said"?

16 A. That's probably true, most doctors don't.

17 Q. Right. But you would agree with me that that's  
18 inconsistent to say that she wrote down everything that was  
19 said and then say, "I didn't write down everything that was  
10:17 20 said"?

21 A. Well, that is inconsistent.

22 Q. Yeah. I want to make sure that I can sum up what you've  
23 told us, this jury, Doctor. From your perspective medically  
24 speaking, Jamie's rape could have occurred from consensual sex,  
10:18 25 non-consensual sex, or no sex at all?

1 A. You said her rape could be consensual sex --

2 Q. I'm sorry. I did say that. And I misspoke.

3 Is it your opinion that Jamie's injuries could  
4 have occurred from sex, consensual or otherwise, or no sex?

5 A. That's correct.

6 Q. Can you offer to any of us, to a reasonable medical  
7 probability, what the cause of Jamie's injuries were?

8 A. No. I mean, no, I don't know.

9 MR. KELLY: Pass the witness.

10 THE COURT: Any redirect?

11 MS. HOLCOMBE: Yes, your Honor.

12 THE COURT: Would anybody like to take a break first?

13 A JUROR: Just finish.

14 THE COURT: Just finish. Okay.

15 MS. HOLCOMBE: Could we also put up Bortz 191? Can we  
16 put them up together? Is that possible? If not, that's fine  
17 then.

18 **REDIRECT EXAMINATION**

19 BY MS. HOLCOMBE:

20 Q. Dr. Irwin, I believe one of Mr. Kelly's questions to you  
21 was -- if I wrote it down right -- that a medical record must  
22 be accurate, otherwise the information later might be  
23 inaccurate. Is that a fair statement of what he asked you?

24 A. I think that's sort of so. If you write it down and it's  
25 inaccurate when you write it down, it's going to be inaccurate

1 two months later.

2 MS. HOLCOMBE: Bortz -- I'm sorry -- 180 -- where is  
3 it -- 191.

4 BY MS. HOLCOMBE:

5 Q. Now, looking at Dr. Scott's record on August 2nd, 2005,  
6 could you remind the jury what she found as to lacerations in  
7 her actual medical record?

8 A. She says there are no lacerations.

9 Q. And whereas, in the letter that was one month later, that  
10 was not her medical record, she found what?

11 A. She said that she found a laceration.

12 Q. So, based upon Mr. Kelly's question to you on his own  
13 interpretation, which would be more accurate in your opinion?

14 A. Well, in my opinion, the medical record is.

15 Q. I believe Mr. Kelly also talked to you about bruises around  
16 Ms. Jones that Dr. Schulz had noted on her record on Joint 105.

17 A. Yes.

18 Q. Okay. And have you had a chance to see those pictures of  
19 those bruises since we do, in fact, have pictures?

20 A. I have subsequently -- you know, since my report I have  
21 looked at those pictures.

22 MS. HOLCOMBE: And can we put up Exhibit -- Joint  
23 Exhibit 112, please? Is that 112? The picture of her -- the  
24 leg.

25 MR. ESTEFAN: That's 112.

1 MS. HOLCOMBE: Okay. Joint Exhibit 113.

2 BY MS. HOLCOMBE:

3 Q. Dr. Irwin, as a medical gynecologist, when you are doing a  
4 woman exam, could you describe, without being in graphic  
5 detail, kind of where the woman's legs are and if you have  
6 sight to the woman's inner thighs?

7 A. We certainly do. The lithotomy position, which is  
8 typically what we do for a pelvic examination, the heels are in  
9 a stirrup. And so, yes, you're -- you can see the inside of  
10 the thighs.

11 Q. So, assume with me that five days after the alleged  
12 incident when Dr. Scott -- if Dr. Scott was examining  
13 Ms. Jones, would she, during the exam, have sight to her inner  
14 thighs?

15 A. I would presume that she did.

16 Q. And so, therefore, if there was any bruising remaining that  
17 had gotten worse maybe, would she have been able to see that  
18 bruising during a normal gynecological exam?

19 A. I would guess so.

20 Q. And would it surprise you to know that Dr. Scott actually  
21 testified that she did not see any bruising on the inner  
22 thighs?

23 A. (Indicating.)

24 Q. Mr. Kelly also said that Dr. Schulz testified that the  
25 fissures are most likely caused by sexual penetration. Is that

10:23

1 what he asked you?

2 A. Yes, I believe so.

3 Q. Okay. But that doesn't necessarily mean that it's most  
4 likely caused by non-consensual sexual penetration. Is that  
5 correct?

10:23

6 A. That's correct.

7 MS. HOLCOMBE: Could we look at Bortz 184, please?

8 BY MS. HOLCOMBE:

9 Q. Okay. Mr. Kelly referenced this record, I believe,  
10 noticing that there were no ulcers, is that correct, during  
11 your testimony?

10:24

12 A. There's no -- healing well, minimal discharge -- there's no  
13 ulceration, that's correct. Well, she's silent on the fact.

14 Q. And what is the date of this record?

10:24

15 A. June the 3rd.

16 Q. Okay.

17 MS. HOLCOMBE: Could we put up Bortz 185, please?

18 BY MS. HOLCOMBE:

19 Q. Dr. Irwin, in looking at this record -- or let me get you a  
20 copy.

10:24

21 Could you tell the jury what the date is of this  
22 record?

23 A. June the 6th.

24 Q. And could you read for us what Ms. Jones complains about  
25 three days after Dr. Scott said there were no ulcerations?

10:25

10:25 1 A. She says that she has fibrous -- she's had Aldara, laser  
2 treatment, and TCA, she was raped five to six months ago --

3 MS. HOLCOMBE: And then could we put up Bortz 186?

4 BY MS. HOLCOMBE:

10:25 5 Q. Dr. Irwin, is this the same doctor that was discussing her  
6 five months of warts?

7 A. Yes.

8 Q. And what is, again, Dr. Ritter looking to resolve, I  
9 believe, seven days after the record where she had had no  
10:25 10 ulceration and she was healing fine?

11 A. Well, she's here for what she thought were recurrent warts.  
12 She has some in the perirectal region that I treated with  
13 cryocautery fairly recently.

14 Q. So, is it safe to say that when she was healing fine  
10:26 15 possibly in May, these warts are back again?

16 A. Right, they are.

17 Q. One last question, Dr. Irwin. I believe Mr. Kelly  
18 mentioned that the letter that she wrote in September -- or I'm  
19 sorry -- Dr. Scott wrote September 7th of 2005, mentioned that  
10:26 20 there was erythema and remaining swelling. Is that correct?

21 Would you like to see the letter?

22 A. Do you have the letter? I don't remember the -- I thought  
23 we were talking about the --

24 MR. KELLY: Also mischaracterizes the question. I  
10:26 25 don't think that what I asked, your Honor. I think it

1 mischaracterizes the question.

2 MS. HOLCOMBE: Could we put up Dr. Scott's letter in  
3 September of 2005?

4 THE COURT: Ladies and gentlemen, objecting to the  
5 recall by a lawyer or by a witness is one more hard issue for  
6 you. You'll decide -- you'll decide what was asked, you'll  
7 decide what was answered as best you can. I'm not going to  
8 referee lawyers' competing versions of what was or was not  
9 said.

10 MS. HOLCOMBE: Could I borrow your 143, please?

11 MR. ESTEFAN: Sure.

12 MS. HOLCOMBE: Thank you.

13 BY MS. HOLCOMBE:

14 Q. In this letter -- Dr. Irwin, can you see it clearly?

15 A. Yes. Yes.

16 Q. And I apologize if I misspoke on Mr. Kelly's question. But  
17 I believe, in referencing this letter, he talked about the fact  
18 that her exam was normal. And then I believe he testified --  
19 or he had asked you that she was doing better at this time --  
20 or she wasn't doing better at this time or something similar to  
21 that. I cannot -- I'm paraphrasing.

22 A. Well, I don't recall. I mean, just the letter -- the  
23 letter says that she had a superficial laceration. The  
24 remainder of her exam was normal.

25 Q. And, Dr. Irwin, based on your examination of Ms. Jones'



1 entire medical record, what, if anything, was noteworthy in  
2 September of 2005, a month and a half after the alleged  
3 incident regarding anything specific?

4 A. You mean on this letter?

5 Q. No.

6 MS. HOLCOMBE: We can take the letter off. Sorry.

7 BY MS. HOLCOMBE:

8 Q. Regarding Ms. Jones' medical history and her records, what,  
9 if any, genital warts had recurred in September of 2005?

10 A. Well, I don't have that record in front of me, I don't  
11 think.

12 MS. HOLCOMBE: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 THE WITNESS: No, I don't have that. Maybe I do.

15 BY MS. HOLCOMBE

16 Q. It's in that big stack of records.

17 A. Oh, the big stack?

18 Q. Yes.

19 A. September the 6th.

20 Q. So, Dr. Irwin, the swelling and the erythema that she might  
21 have been experiencing in September, a month and a half after  
22 the alleged incident, what could be the cause of that?

23 A. Well, she reports dysuria, which is burning on urination,  
24 and urgency and a vaginal discharge. She has erythema again  
25 and a white discharge. The remainder of her exam is normal.

1 Dr. Scott treats her for bladder infection and  
2 treats her for a yeast infection.

3 Q. And, Dr. Irwin, one last question. Based on your entire  
4 examination of everything involved in this case regarding the  
5 records and the deposition testimony, as well as the pictures  
6 of the bruises, are there other possible causes to -- can you  
7 say to a medical degree of certainty that there could be other  
8 possible causes for the injuries sustained between -- or in  
9 Ms. Jones' lower genital tract?

10 A. There could be a lot of causes.

11 MS. HOLCOMBE: Okay. No further questions, your  
12 Honor.

13 MR. KELLY: I was going to say I'll be brief, your  
14 Honor; but apparently it's not my turn.

15 THE COURT: Let her say if she'll be brief, and we'll  
16 see if she is.

17 MS. CULLEN: We shall try.

18 **RE CROSS-EXAMINATION**

19 BY MS. CULLEN:

20 Q. Doctor, I'll be hopping around a bit just covering some  
21 points that came up. And if you don't follow one of my hops,  
22 please let me know; and I'll try to be a little clearer about  
23 it.

24 You were asked some questions about arousal and  
25 the likelihood of fissures and whatnot. Let me ask you this:

10:31 1 In your experience of many years treating a whole lot of women,  
2 would you agree that it's not uncommon for women to have sex  
3 even when they're not particularly aroused; and how often does  
4 that cause fissures?

10:31 5 A. Well, I don't know. I mean, it certainly could; but  
6 there -- believe you me, there are lots of women that have sex,  
7 vaginal intercourse, that are not sexually aroused.

8 Q. And they don't all get fissures, do they?

9 A. No.

10:31 10 Q. On the issue of strains of HPV, that's a sexually  
11 transmitted disease?

12 A. It is.

13 Q. Can a woman who is exposed to either Type 6 or 11 and  
14 develops warts, can she, during that same exposure, also be  
10:31 15 exposed to a strain that can cause precancerous cells?

16 A. Certainly.

17 Q. The same exposure?

18 A. Absolutely.

19 Q. Same man?

10:32 20 A. Absolutely.

21 MS. CULLEN: Could we pull up Bortz 180, please?

22 Let's try 184. In particular, just as big as you  
23 can blow it up, this line right here.

24 BY MS. CULLEN:

10:32 25 Q. It's difficult to read on these screens, isn't it, Doctor?

10:33

1 A. It's actually just fine.

2 Q. Would you look, please, sir, at the line that has the  
3 circle with a line through it and then it says "LE" and then it  
4 says "edema."

10:33

5 A. Yes.

6 Q. And I want to ask you about medical abbreviations. That  
7 circle with a line through it means "no." Is that correct?

8 A. Yes.

9 Q. What does "LE" mean?

10:33

10 A. I have no idea.

11 Q. Is that not an abbreviation you've seen used for "lower  
12 extremities"?

13 A. That could be. I don't use it so -- but it could be.

14 MS. CULLEN: Drop that off, please.

10:33

15 BY MS. CULLEN:

16 Q. A couple of lines below that we have, "External genitalia."

17 If the doctor were noting the condition of the  
18 genitalia and whether or not there were or were not any  
19 swelling, wouldn't you anticipate it being located there?

10:34

20 A. I'm sorry. If --

21 Q. If she were noting whether there was or was not swelling of  
22 the genitalia, wouldn't you expect it to be on the line where  
23 she's discussing genitalia?

24 A. Yes.

10:34

25 MS. CULLEN: Your Honor, may we approach?

10:34 1 (At sidebar with all counsel)

2 MS. CULLEN: Prior to this examination, I believe that  
3 you instructed Stephanie that she should not be asking  
4 questions about whether Ms. Jones gave an inaccurate medical  
10:35 5 history concerning STDs.

6 THE COURT: I was worried about the suggestion that  
7 she was not telling the truth.

8 MS. CULLEN: Exactly. And now Mr. Kelly has  
9 questioned the doctor about the likelihood of penetration  
10 causing these fissures. And we've had extensive testimony from  
11 the doctor that, given the treatment she'd been receiving for  
12 the warts and whatnot, that that made fissures much more likely  
13 from just any cause.

14 I would now like to ask the doctor if a  
10:35 15 physician's opinion as to the likely relative causes of  
16 fissures is not impacted by having a correct and complete and  
17 full medical history of these STDs and the treatment for them.

18 MR. KELLY: That's going directly -- I mean, I  
19 certainly didn't violate anything that the Court instructed not  
10:36 20 to go to and that does. And it's --

21 MS. HOLCOMBE: However, it becomes more relevant  
22 because as a medical doctor, if he -- in diagnosing, he needs  
23 all the facts and, therefore, he needs all the facts when he  
24 diagnoses fissures and things like that. Dr. Schulz would also  
10:36 25 need all the facts given the day --

1 THE COURT: How would you word the question?

2 MS. CULLEN: I would like to ask him if I was going to  
3 pull up the record and show him where it says no history of  
4 STDs and ask if one believed, when examining a patient with  
5 fissures, such as the ones reported, if a doctor incorrectly  
6 had been informed that there was no history of STDs, what's the  
7 likelihood that that would impact the doctor's opinion on the  
8 probable cause of fissures.

9 MR. KELLY: The reason that is grossly inappropriate  
10 is because at the time of her deposition, Dr. Schulz was  
11 clearly made aware of --

12 THE COURT: But you've relied on this document,  
13 though. I mean, we can take a different stance on the  
14 deposition but --

15 MR. KELLY: What I am saying, your Honor, is that her  
16 deposition testimony, which is what I asked about, was with  
17 full knowledge -- this gains nothing but injecting that very  
18 issue that the Court's instructed us not to get into. It  
19 injects that in front of this jury, and that's all that it  
20 does. It doesn't accomplish anything that Dr. Schulz didn't  
21 already know --

22 THE COURT: Where were you going with your questions  
23 about if somebody wrote something down that was incorrect? I  
24 thought you were speaking to this point.

25 MR. KELLY: No, your Honor. I'm speaking to the

10:37 1 general comments that counsel had made throughout this trial  
2 about inaccuracies in the records. And as the Court well  
3 knows, their intention is to attack the veracity of Ms. Jones  
4 and other records throughout this. It was not directly related  
10:37 5 to --

6 *(In open court)*

7 THE COURT: Ladies and gentlemen, we're going to take  
8 a 10-minute break.

9 Would all please rise for the jury.

10:38 10 *(Jury not present)*

11 *(Recess was taken from 10:38 a.m. to 10:40 a.m.)*

12 THE COURT: One thing I -- the jury has asked for  
13 confirmation that Friday is an off day for us. I'm going to  
14 confirm that before we leave or maybe when they come back.

10:40 15 I'm sorry, Doctor. If you want to step down or  
16 stretch your legs --

17 THE WITNESS: I'm fine.

18 THE COURT: You're okay. All right.

19 At the end of the day, don't forget to go home.  
10:40 20 I mean, if you're still there tomorrow morning --

21 Okay. On this issue, I do think that -- it seems  
22 to me that plaintiff is suggesting that Dr. Schulz had a strong  
23 opinion that Ms. Jones was sexually penetrated, both front and  
24 back, and that that is an important diagnosis. I think  
10:41 25 defendants do have the right to suggest that since the doctor

1 did not know about STDs in the patient's history, that the  
2 diagnosis was necessarily incomplete.

3 I think we're then entitled to go into whatever  
4 you want to on Dr. Schulz' deposition that she then -- when she  
5 found out the true history, she had a different account. I  
6 don't want anybody suggesting that Ms. Jones lied or anything  
7 like that. I think it's a very high standard to require  
8 perfect information flow right after someone has gone through  
9 what she claims she went through. So, can you-all cut it that  
10 fine?

11 MS. HOLCOMBE: Yes, your Honor.

12 MS. CULLEN: I believe that I can, your Honor. I  
13 believe that I can. We'll simply use the record to show that  
14 the doctor did not have the benefit of Ms. Jones' history of  
15 STDs and the extensive treatment over several months for those  
16 STDs.

17 THE COURT: Yeah. I'm afraid leaving that out  
18 completely is just misleading. Okay. Thank you very much.

19 *(Recess was taken from 10:42 a.m. to \*\* a.m.)*

20 MS. CULLEN: Okay. I understand there's another  
21 record I wanted to use on redirect, and I understand M Kelly  
22 objects to it.

23 THE COURT: Let's talk about it.

24 MS. CULLEN: It's a redacted record from Northwest  
25 Women's Center. It's redacted to remove all the --



1 THE COURT: Yeah, yeah.

2 MS. CULLEN: -- 412 information. And it's a pelvic  
3 examination report in 2002 where she talks about -- the doctor  
4 talks about redness in the posterior fourchette, but she  
5 reports she's had problems with razor burn in this area and  
6 that this is always there. And the doctor had mentioned that  
7 in the event there were women who shaved in that area --

8 THE COURT: Yes, yes.

9 MS. CULLEN: So, we simply wanted to bring up this  
10 record and point out that there is medical history of Ms. Jones  
11 having exactly those problems in exactly that area.

12 MR. KELLY: In 2002, your Honor. That's two years  
13 before this occurred. I'm sure the witness can't say that any  
14 redness that was there in 2002 would have still been there in  
15 2004. Again, let's do the math on her age. She was 16 year  
16 old.

17 This is really -- for one thing, it gets  
18 dangerously close to the 412 ruling. Another, it is just not  
19 relevant.

20 THE COURT: I think that's a little bit too remote. I  
21 don't care it helps the facts or the process. I really don't.

22 MR. KELLY: Judge, because after Dr. Irwin is done  
23 we're going to call our next witness, Ms. Morgan, we never did  
24 get rulings on our motions in limine and there's a few issues  
25 that we've talked about before this morning and couldn't get

10:52 1 agreement on. So, we need some rulings if we're not going to  
2 take a break between now and Ms. Morgan.

3 THE COURT: Okay. Let's hear them.

4 MR. ESTEFAN: I have Plaintiffs' 5, which is that the  
10:52 5 plaintiff lives in any specific type of home or location.

6 MS. VORPAHL: We said we didn't have a problem with  
7 that.

8 MR. ESTEFAN: Okay. I'm sorry.

9 THE COURT: What's next?

10:52 10 MR. ESTEFAN: 6 is the plaintiff's spouse earns part  
11 of income from unemployment or military benefits.

12 MS. VORPAHL: I think we said we didn't have a problem  
13 with that either.

14 MR. McKINNEY: I have a problem with that. As of his  
10:52 15 deposition in April of this year and since his discharge from  
16 the Navy \* \* in July of 2009, Kallan Daigle has been unemployed  
17 and is drawing a significant unemployment check and is  
18 theoretically not asking for work -- is theoretically out  
19 trying to find a job; but his salary requirements are so high,  
10:53 20 he can't get a job.

21 THE COURT: Tell me what the relevance to this case  
22 is.

23 MS. VORPAHL: I'm entitled to place the witness, who  
24 he is, what he does or does not do for a living and --

10:53 25 THE COURT: What does it bear on this case?

10:53 1 MR. MCKINNEY: It bears generally on what kind of  
2 person Kallan Daigle is, someone who is not out looking for a  
3 job, he's living off the State of California to the tune of  
4 \$1,700 a month and he won't take a job that doesn't pay --

10:53 5 THE COURT: This, again, is one of those collateral  
6 issues that we can spend a lot of time on and I think this has  
7 very little to do with whether or not the plaintiff was raped.  
8 I mean, we have to go into the whole employment market in  
9 California.

10:53 10 MR. MCKINNEY: He's here in Texas, Judge.

11 THE COURT: The whole employment market in Texas, what  
12 specific efforts he's made, what limitation he has, what kind  
13 of employment history he has. I just see no purpose to that.  
14 That's not coming in.

10:54 15 MS. VORPAHL: Your Honor, can we make just sure that  
16 we understand that ruling? Certainly we would be entitled to  
17 say: And what do you do for a living? You don't work? You  
18 haven't worked since --

19 THE COURT: Why is that relevant?

10:54 20 MS. VORPAHL: I mean, I do think it's relevant to  
21 place the witness. I mean, I think it's relevant that neither  
22 of these people work. You know, Ms. Jones now teaches three  
23 courses as an instructor at a community college.

24 THE COURT: Well, that's work.

10:54 25 MS. VORPAHL: And they're -- I mean, they don't do

1 anything.

2 THE COURT: Well, this is a lawyer bias. I mean, it's  
3 hard finding a job in this climate. Now, it's difficult enough  
4 to testify as a witness without having your work ethic called  
5 into question.

6 MS. CATES: May I say one thing? The thing is that  
7 Kallan testified that he tells these perspective employers that  
8 he needs a high level of money to compensate for losing  
9 workers' comp to even get the job. So, I think --

10 MS. VORPAHL: Unemployment.

11 MS. CATES: Unemployment.

12 MR. McKINNEY: Compensate for losing unemployment.

13 MS. CATES: So, he's prohibiting himself from getting  
14 a job by saying: I need X amount of money --

15 MS. VORPAHL: \$18 an hour I think is what he --

16 MS. CATES: 17 or \$18 an hour because otherwise I'd be  
17 better off with unemployment.

18 MR. KELLY: He doesn't say: Otherwise, I'd be better  
19 off with unemployment to the employers.

20 He may have said that in his deposition.

21 THE COURT: And that --

22 MS. CATES: That's fair.

23 THE COURT: -- that is true, a lot of people are  
24 better off with unemployment than with a low-pay job. He's got  
25 two -- he's got two children at home to take care of. I can't

10:55 1 fault him for that, trying to get the maximum income.

2 No, it's not coming in.

3 MR. ESTEFAN: With Plaintiffs' Number 10, your Honor,  
4 is that plaintiff's mother, Breanna Morgan, allegedly stole  
10:55 5 money from her, from Jamie.

6 MS. VORPAHL: Jamie has reported post-Iraq to her  
7 psychologists that her mother stole money from her and  
8 committed a whole litany of other bad acts against her. Those  
9 statements are either true or they're false. Breanna Morgan  
10:56 10 says: Oh, no, let me explain. Here's --

11 THE COURT: They go to what, though? The emotional  
12 damage that she has suffered?

13 MR. MCKINNEY: They go to Dr. Scarano's diagnosis of  
14 Ms. Jones as having histrionic personality disorder because  
10:56 15 it's Dr. -- it's in Dr. Scarano's report that this is exactly  
16 the kind of behavior mechanism that a histrionic person has,  
17 they essentially imagine or inflate otherwise innocuous and  
18 ordinary events.

19 MS. VORPAHL: But they also go to both witnesses'  
10:56 20 truth and veracity. They absolutely -- somebody is not being  
21 truthful here, Judge.

22 THE COURT: So, it's credibility?

23 MS. VORPAHL: Absolutely a credibility issue and a  
24 serious credibility issue.

10:56 25 MS. CULLEN: And to the --

1 MS. VORPAHL: I mean, there's a whole --

2 THE COURT: One at a time. Mr. McKinney can go next.  
3 Ms. Cullen can go after that.

4 MR. MCKINNEY: In addition to credibility, it is a  
5 part of the constellation of symptoms of Ms. Jones' multiple  
6 personality disorder. It's not just the histrionic side, but  
7 there's also the --

8 THE COURT: Okay. I understand that.  
9 Ms. Cullen.

10 MS. CULLEN: I was going to say it certainly goes to  
11 Ms. Jones' damages because she's talking about it to her  
12 therapists on more than one occasion about: Mom is taking  
13 money out of my bank account illegally again. And what am I  
14 going to do?

15 And the therapist talking to her about taking  
16 legal steps if necessary to protect herself. All of that goes  
17 to her state of mind, and this is a therapist she supposedly is  
18 seeing because of PTSD.

19 THE COURT: So, it's coming in for two purposes. One,  
20 because it arguably didn't happen and it shows she's not  
21 credible and given to hallucination. And going in for the  
22 completely opposite reason, that it is true and, therefore, the  
23 psychiatrist -- or the psychological profile of this woman is  
24 damaged?

25 MS. CULLEN: Whether true or not, was a source of

1 stress and upset to her, in addition to anything that may have  
2 happened in Iraq.

3 THE COURT: Coming in for two totally contradictory  
4 purposes. Okay. Let me hear the response.

5 MR. KELLY: Well, the response is, Judge, it's a -- it  
6 was explained in the deposition. Both Ms. Jones and her  
7 mother testified that the event was a misunderstanding in  
8 which Jamie was providing support for her mother, had postdated  
9 some checks monthly; and her mother was relying on Jamie's  
10 income to afford the bigger apartment that they had gone and  
11 gotten. Jamie then moved out of the apartment. And so, then  
12 her mom was stuck with this bigger obligation for this  
13 apartment; and she went and cashed some of these checks that  
14 Jamie had postdated. That's the explanation for it.

15 So, it's an interpretation issue of how -- I  
16 mean, if Jamie reported to a therapist that she stole it --  
17 that mom stole it, that's Jamie's interpretation, of course;  
18 but her mother says --

19 THE COURT: No, I'm not after the truth so much here.  
20 I'm just trying to --

21 MR. McKINNEY: Well, I don't --

22 MR. KELLY: It certainly --

23 MS. VORPAHL: Your Honor, it also --

24 THE COURT: One at a time. I'll hear from Mr. Kelly  
25 now.

10:59 1 MR. KELLY: It certainly doesn't go to contradiction  
2 as has been alleged, your Honor, because both witnesses have  
3 testified that what Mr. Estefan just represented is what  
4 happened. So, there is no contradictory evidence in this case.  
10:59 5 There's no way to -- the defendants certainly have no evidence  
6 that either witness has been untruthful about that.

7 The fact that Jamie's perception may have been  
8 that by her mother cashing these postdated checks -- I mean,  
9 it's another side issue. It takes us --

10:59 10 THE COURT: It is a side issue. That's my primary  
11 concern. But what I -- part of what they're alleging, if I  
12 understand them right, is that irrespective of truth or  
13 falsity, it bears on her psychological damages, I think.

14 MR. McKINNEY: Well, it bears on her psychological  
10:59 15 damages; but what Dr. Scarano has stated in his report and what  
16 he testified to in his deposition is that the way you look at  
17 someone like Ms. Jones is you look at how she perceives real  
18 life events and how she describes them --

19 THE COURT: Okay. That takes us back to the truth of  
11:00 20 the matter, which I see as just an enormous, voluminous set of  
21 questions and answers.

22 MR. McKINNEY: It's not the truth, it's not -- well --

23 THE COURT: If it's true, then it's not as if she's  
24 paranoid. It's true -- I mean, just because you're paranoid  
11:00 25 doesn't mean you don't have enemies.



11:00 1 MR. MCKINNEY: What Dr. Scarano will say, and I think  
2 what the jury will conclude, is that Ms. Jones perceives what  
3 any objective person would be -- would perceive to be a fairly  
4 innocuous fact pattern and Ms. Jones, because of her  
11:00 5 predisposition, magnifies that fact pattern in such a way as to  
6 make herself a victim. And the way you diagnose a histrionic  
7 personality disorder is you look at the multiple episodes in  
8 which Ms. Jones has done precisely that.

9 THE COURT: How many other episodes we going to look  
11:01 10 at.

11 MR. MCKINNEY: Well, we've talked about the San Diego  
12 incident. We've talked about the psychosomatic incidents. The  
13 incident that we're about here today, the fundamental incident,  
14 is -- falls in that classification. \* But what you look for  
11:01 15 and what Dr. Scarano has looked for is the -- how Ms. Jones  
16 relates interpersonally to others and how she consistently  
17 casts herself as a victim.

18 THE COURT: I'm going to allow it. I'm going to cut  
19 it off before it goes too long, though. I allow it.

11:01 20 MS. VORPAHL: I don't think it will take too long,  
21 your Honor.

22 THE COURT: What else?

23 MR. ESTEFAN: Plaintiffs' 15, that the defendants not  
24 discuss or bring attention or make any reference to any  
11:01 25 extramarital affair by Jamie's parents when they were going

11:01 1 through the divorce.

2 THE COURT: That's the same issue over again, isn't  
3 it?

4 MS. VORPAHL: Absolutely it is. And, I mean, that is  
11:01 5 all a part of her alleged damages. Both of her parents have  
6 claimed that the reason they got a divorce --

7 THE COURT: Yeah, I know, she was right in the middle  
8 of that. And she's testified to that. I think it comes in.

9 MR. ESTEFAN: Judge, Plaintiffs' 37 is that the  
11:02 10 defendants not bring up the past, present, or pending book or  
11 movie deal. I think there's clear testimony from Ms. Jones  
12 about not writing all the book and having other contributors to  
13 it, about basing part of it on truth.

14 THE COURT: The problem is that it does show motive,  
11:02 15 though. How do we keep that out?

16 MR. KELLY: Well, your Honor, here's the problem with  
17 the motive. That book and movie issue certainly never even had  
18 its formative thought until well after this case was in  
19 litigation. And so, to say that that was the motivation for  
11:02 20 bringing these allegations, just no way, your Honor.

21 THE COURT: Well, the fact that it wasn't -- the book  
22 didn't start till later doesn't mean that wasn't part of the  
23 motivation. I mean, some agent may have advised her that you  
24 need to have a lawsuit already underway before the book can get  
11:03 25 a publisher. That has to come in.

11:03 1 MR. ESTEFAN: All right. And one final thing, your  
2 Honor, that we have to take up. This can be done after lunch,  
3 though. It's with Kallan.

4 THE COURT: Okay. Let's do that. Let's get the jury  
11:03 5 back in, please.

6 *(Jury present)*

7 THE COURT: Members of the jury, please be seated.

8 Ladies and gentlemen, I did want to confirm that  
9 Friday will be a non-trial day. You don't need to come. I  
11:04 10 know you'll have horrible withdrawal. Okay. I hope you can  
11 limp by until Tuesday.

12 Okay. You may proceed.

13 MS. CULLEN: Thank you, your Honor.

14 BY MS. CULLEN:

11:04 15 Q. Dr. Irwin, before our break, I wanted to you ask you about  
16 questions that were posed to you by Mr. Kelly when he told you  
17 that in Dr. Schulz' opinion, the doctor who examined Ms. Jones  
18 in Baghdad, that her opinion was that penetration was the most  
19 likely cause of fissures. And I want to take up that issue  
11:05 20 with you.

21 Let's start by looking at Joint Exhibit 105 at  
22 Page 35.

23 MS. CULLEN: Could you enlarge, please, yes, ma'am,  
24 that section.

11:05 25 BY MS. CULLEN:

11:05 1 Q. Doctor, do you see this entry right here, zero with the  
2 slash through it, H/0 STD?

3 A. Yes.

4 Q. What does that mean?

11:05 5 A. No history of sexually transmitted diseases.

6 Q. That notation in Dr. Schulz' record, what does that  
7 indicate?

8 A. Well, it indicates that she inquired of her patient whether  
9 she had any sexually transmitted diseases; and presumably the  
11:06 10 answer was no.

11 Q. Recap for us briefly what information do you have -- from  
12 having actually reviewed all of Ms. Jones' gynecological  
13 records, what information do you have that was, in your  
14 opinion, about the cause of fissures?

11:06 15 A. Well, she had -- she certainly had a six-month history of  
16 herpes, severe herpes, recurrent herpes, and recurrent  
17 condyloma, genital condyloma, which were treated on numerous  
18 occasions by various destructive means.

19 Q. Would knowing about that history of STDs and the treatment  
11:06 20 for that history immediately before -- in the months  
21 immediately before going to Iraq, would that impact, in your  
22 opinion, a reasonable physician's formulation of opinions  
23 concerning probability of cause of fissures?

24 A. Certainly possibly, yeah.

11:07 25 MS. CULLEN: I'll pass the witness. Thank you, your

1 Honor.

2 THE COURT: Thank you.

3 Mr. Kelly.

4 MR. KELLY: Thank you, your Honor.

5 **RECROSS-EXAMINATION**

6 BY MR. KELLY:

7 Q. Before Dr. Schulz rendered an opinion in her deposition she  
8 was aware of the history of STDs, wasn't she, Doctor?

9 A. I don't know that.

10 Q. You don't remember her being asked about that at her  
11 deposition?

12 A. I don't, no.

13 Q. You don't have any reason to disagree with me if I tell you  
14 that she was aware of the STD history before I asked her the  
15 question about the possible causes of the fissures. You don't  
16 have any reason to disagree with that, do you?

17 A. Well, I'll agree with you if that's so in the deposition.

18 MR. KELLY: Well, do we have her deposition?

19 A. I would prefer to --

20 MR. KELLY: If we may have just a moment, your Honor,  
21 I think we need to actually get that deposition transcript  
22 based upon those questions.

23 BY MR. KELLY:

24 Q. While we're waiting for that, you agree with me that the  
25 best person to know what a record means is the person who made

1 the record?

2 A. I would think so, yes.

3 Q. And so when the questions were asked earlier about what  
4 Dr. Scott meant when she made the August 2nd, 2005, entry that  
5 said no lacerations versus her letter from the same examination  
6 that said a small laceration, you would agree with me, Doctor,  
7 that Dr. Scott would be the best person to answer what she  
8 meant?

9 A. Sure.

10 Q. Okay. And if Dr. Scott said that what she meant was no  
11 lacerations I could repair in the medical record and there was  
12 a small laceration on the right-hand side of the introitus --

13 MS. HOLCOMBE: Objection, your Honor, that  
14 mischaracterizes the prior testimony of Dr. Scott in this  
15 courtroom. She said that it was not a small laceration on it  
16 but a small aberration.

17 THE COURT: The jury is going to have to sort that  
18 out. I'm going to allow the question.

19 MR. KELLY: Bortz 143, please. Bill, would you please  
20 just highlight and expand the word "laceration"?

21 BY MR. KELLY:

22 Q. Is it fair to say, Doctor, that I didn't mischaracterize  
23 that word at all?

24 A. That's what the letter says, "laceration."

25 Q. Okay. And I'm having a difficult time with the Elmo. So,

11:09 1 what I would like to do -- and I think you were asked about  
2 whether this letter said that there was erythema and edema.  
3 But I want to put up Bortz 191, if we could.

4 This is the exam notes from the same date,  
11:10 5 Doctor, August 2nd, 2005.

6 MR. KELLY: If we could blow up the highlighted part,  
7 Bill.

8 BY MR. KELLY:

9 Q. One more time, Doctor, just to address my apparent  
11:10 10 misrepresentation to you. Dr. Scott finds erythema and edema  
11 on August 2nd, 2005, right?

12 A. Yes.

13 Q. All right.

14 MR. KELLY: Your Honor, may I approach?

11:11 15 THE COURT: Yes, you may.

16 BY MR. KELLY:

17 Q. Doctor, I want you to take your time, spend all the time  
18 you want with this deposition transcript of Dr. Schulz, which  
19 you already reviewed.

11:11 20 A. It's been awhile, and I apologize for not rereviewing it.

21 Q. Not a problem. I want you to take your time, as much as  
22 you need, and let me know, Doctor, if, in fact, Dr. Schulz was  
23 well aware of Jamie's STDs prior to offering the opinion that  
24 the most likely cause of the fissures in this case were sexual  
11:11 25 penetration, both vaginal and anally?

1 MS. HOLCOMBE: Objection, your Honor, again, that  
2 is -- may we approach?

3 (*At sidebar with all counsel*)

4 MS. HOLCOMBE: It's not to -- so as not to  
5 accidentally misphrase anything about Mr. Kelly, I feel this is  
6 improper at this point to show him a passage in there that says  
7 it is, indeed, what Dr. Schulz previously testified to.  
8 Mr. Kelly can show him the passage that Dr. Schulz previously  
9 testified to, but to give him the entire deposition and tell  
10 him to go through the entire thing to look for something that  
11 may or may not be there --

12 THE COURT: Yeah.

13 MS. CULLEN: Agree.

14 MR. KELLY: I want him to have the opportunity, your  
15 Honor, to tell me I'm wrong if he so chooses. I can tell him  
16 exactly the page and line number where I asked the question.

17 THE COURT: I think that's appropriate. I think you  
18 should tell him that.

19 (*In open court*)

20 BY MR. KELLY:

21 Q. Doctor, I tell you what, let's just do this. If you would  
22 look at Page 44 going on to Page 45 --

23 THE COURT: Sorry.

24 MR. KELLY: I'm sorry, your Honor.

25 THE COURT: No, it's my fault. I forgot to turn the



11:13 1 microphone on again. It is a temptation, though. It is  
2 regularly a temptation.

3 MR. KELLY: My wife wants one of those, Judge.

4 BY MR. KELLY:

11:13 5 Q. Doctor, at Page 44 and going on to Page 45, is it pretty  
6 clear to you that Dr. Schulz is being made aware in the 40's  
7 that Jamie has STDs?

8 A. Yes.

9 Q. And she's testifying about both HSV, the herpes virus, and  
11:13 10 HPV, the Human Papilloma virus, true?

11 A. Yes.

12 Q. Now, if you would, sir, please look at Page 78 beginning at  
13 Line 23. And, by the way, that means it was asked after the  
14 knowledge of STDs, right?

11:14 15 A. Yes.

16 Q. So, if you're looking at Page 78, Line 23, do you see that  
17 Dr. Schulz admits that based on her findings, she would have  
18 told Jamie that it looks like she was penetrated both vaginally  
19 and anally? It goes on to Page 79, Line 6, Doctor.

11:14 20 A. Yeah. She said: I may have said something along those  
21 lines.

22 MS. HOLCOMBE: Objection, your Honor. This is, again,  
23 at the time -- this mischaracterizes Dr. Schulz' prior  
24 testimony.

11:14 25 THE COURT: I'm going to let you bring that out on

1 cross.

2 BY MR. KELLY:

3 Q. Well, I tell you what, let's don't mischaracterize  
4 Dr. Schulz' testimony at all, Doctor.

5 Beginning at Page -- tell you what, let's start  
6 at Page 77, Line 23. And the first passage I would like you to  
7 read out loud, Doctor, is from Page 77, Line 23 to Page 78,  
8 Line 8.

9 A. "QUESTION: Okay. And you were asked a number of questions  
10 about how those can be caused and I think you gave some  
11 possible -- some possibilities. But truthfully, the most  
12 likely cause of the fissures in this case were sexual  
13 penetration, true?"

14 And the answer is: "Most likely, yes."

15 And then the question -- the next question is:  
16 "Okay. And that goes for both the vaginal and the anal  
17 fissures, true?"

18 A couple of objections. And then Line 8 says:  
19 "That would be my assumption."

20 Q. Okay. Now go ahead and read Page 78, Line 23 to -- and it  
21 begins at Line 23, going on to Page 79, Line 6.

22 A. "Do you recall telling Jamie that it was clear from your  
23 examination that she had been penetrated both anally and  
24 vaginally?"

25 And her answer was: "I would have told her that

11:16 1 was possible based on the findings."

2 And -- and then you ask -- "QUESTION: Okay.  
3 Could you have said something along the lines of it looks like  
4 you have been penetrated both vaginally and anally?"

11:16 5 And the answer is: "I may have said something  
6 along those lines."

7 Q. I didn't mischaracterize anything, did I, Doctor?

8 THE COURT: He's -- that's not for him to say.  
9 That's -- ask another question.

11:16 10 BY MR. KELLY:

11 Q. You were hired by KBR to come in here and tell this jury  
12 that Jamie may or may not have had sex and that it may or may  
13 not have been consensual, right?

14 A. I was hired to review the medical records and make an  
11:16 15 opinion.

16 Q. And your opinion is she may or may not have had sex and may  
17 or may not have been consensual?

18 A. That's correct.

19 Q. That's really kind of for the jury to determine, isn't it,  
11:16 20 sir?

21 A. Of course, it is.

22 THE COURT: I really hope we can finish with this  
23 witness pretty soon.

24 Ms. Holcombe, you may have a few more questions,  
11:17 25 if you wish.

1 MS. HOLCOMBE: I have no further questions.

2 THE COURT: No?

3 Ms. Cullen?

4 MS. CULLEN: I'll be brief, your Honor, I promise.

5 **FURTHER RECROSS-EXAMINATION**

6 BY MS. CULLEN:

7 Q. Was there anything in any of that that Mr. Kelly had you  
8 read that would suggest to you that Dr. Schulz had the benefit  
9 of the records that show the extensive and critical -- to the  
10 issues of the condition of her skin, the critical information  
11 concerning all of the treatment Ms. Jones had been getting for  
12 her STDs for the six months prior to going to Iraq?

13 A. No.

14 Q. Was any of that in there?

15 A. No.

16 MS. CULLEN: Pass the witness, your Honor.

17 THE COURT: Thank you.

18 MR. KELLY: One question.

19 **FURTHER RECROSS-EXAMINATION**

20 BY MR. KELLY:

21 Q. While it may not have been in what I had you read, Doctor,  
22 you're well aware that it was covered fully in that deposition,  
23 aren't you?

24 A. I presume that it was, but I don't know. I'm sure it was.

25 THE COURT: Okay. Thank you very much.

1 You may step down, Doctor. You're free to go.  
2 Thank you.

3 MR. KELLY: May I retrieve our copy of the deposition  
4 from the witness stand?

5 THE COURT: Yes.

6 MR. ESTEFAN: Next witness, your Honor?

7 THE COURT: Next witness.

8 MR. ESTEFAN: Plaintiff calls Breanna Morgan.

9 THE COURT: Ms. Morgan.

10 Good morning, Ms. Morgan. We're going to have  
11 you up here near me. Before you take your seat, ma'am,  
12 Mrs. Loewe will administer the oath. If you raise your right  
13 hand.

14 MS. LOEWE: Do you solemnly swear the testimony you're  
15 about to give in the matter now before the Court will be truth,  
16 the whole truth, and nothing but the truth?

17 THE WITNESS: I do.

18 THE COURT: All right. Try to make yourself as  
19 comfortable as you can, and please speak directly into the  
20 microphone. It is adjustable.

21 You may inquire.

22 MR. ESTEFAN: Thank you, your Honor.

23 **BREANNA MORGAN, DULY SWORN, TESTIFIED:**

24 **DIRECT EXAMINATION**

25 BY MR. ESTEFAN:

11:20 1 Q. You may need to pull that microphone a little closer.

2 Would you state your name please?

3 A. Breanna Morgan.

4 MR. ESTEFAN: Can you-all hear?

11:20 5 BY MR. ESTEFAN:

6 Q. Ms. Morgan, how are you related to Jamie Leigh Jones?

7 A. I am her mother.

8 Q. Can you please tell us a little bit about your personal  
9 background?

11:20 10 A. My personal background professionally or --

11 Q. Personal first and then we'll get to professional. Where  
12 were you born, where were you --

13 A. I was born in Seymour, Indiana.

14 Q. Yes.

11:20 15 A. And I grew up in Indiana and later got married and moved to  
16 Texas. And I met Jamie's father when I was in high school and  
17 we married and had Jamie a couple of years later and moved to  
18 Texas. And he started his career basically in the Dallas area,  
19 Garland, Texas.

11:21 20 Q. How did you get down to Houston?

21 A. We moved -- let's see -- from Garland, Texas to Bedford,  
22 Virginia. We were moving with his career. And we moved on to  
23 Pittsburgh and then on to Houston, following his career.

24 Q. Okay. Now let's move on to your professional background.

11:21 25 A. Okay.

11:21 1 Q. Please tell us some of that.

2 A. Okay. I am presently the president of the Houston Air  
3 Cargo Association, and I've been involved with the association  
4 for -- this is my third year. So, I served a two-year term as  
11:21 5 president and then was just recently reelected to serve another  
6 two-year term.

7 And I'm in the transportation industry, which is  
8 my love. I love the transportation industry. I'm also  
9 involved with the National Transportation League Committee.  
11:22 10 I'm also involved in several different associations and  
11 organizations. The Greater Houston Partnership is one.  
12 Transportation Clubs International is another. And so, it's  
13 just a career that I just love.

14 Q. Before that you worked for some airline company here in  
11:22 15 Houston, I think?

16 A. Continental Airlines for seven years.

17 Q. Right.

18 A. Uh-huh.

19 Q. Some of the time when Jamie was growing up, were you a  
11:22 20 stay-at-home mother?

21 A. Yes, for many years.

22 Q. Can you tell us a little bit about Jamie's activities as a  
23 young lady before she -- maybe starting in high school?

24 A. In high school? She was on the drill team. She was a  
11:22 25 strutter. We had no idea Jamie's dance capabilities until she

11:23 1 became a strutter. And then much to our surprise, she was --  
2 we learned she was an excellent dancer and she won an award and  
3 a trophy, most improved strutter from the beginning to the end.

4 And as a child, whatever Jamie really set out  
11:23 5 that she really wanted to do, she would do very well. She  
6 was -- did very well at it. Of course, there's some things  
7 that she had done like basketball, she didn't do so well. But  
8 we encouraged her, kind of let her try whatever she wanted to  
9 to give her as many options as we could to figure out what she  
11:23 10 was good at and what she liked and to try to find her niche, so  
11 to speak.

12 Q. Did Jamie have any hobbies growing up?

13 A. Hobbies? I'm trying to think. Well, she liked -- well, in  
14 high school was the dancing. She liked being involved in  
11:24 15 things. She was on the -- she was a Brownie. She was a  
16 Girl Scout. She was on the swim team. So, she was always busy  
17 with something, played guitar some, piano lessons. We were  
18 always busy with some kind of sporting event that she was in.  
19 She kept us busy parents.

11:24 20 Q. Thank you. How would you characterize your relationship  
21 with Jamie growing up in those years in her mid to late teens?

22 A. It was very good. I love being a parent. That's one of my  
23 loves in my life., I mean, I could -- I enjoy being a parent.  
24 I still enjoy being a parent and a grandparent today.

11:24 25 Jamie was a very good child. I love spending



11:25 1 time with her. I love watching her grow. I love being  
2 involved as a parent, very involved in her activities, her  
3 events. I think I attended most everything that she ever did  
4 growing up with maybe the exception of just a couple of times  
11:25 5 \*.

6 Q. And you and Jamie's dad divorced?

7 A. Yes.

8 Q. Okay. After that divorce, were you in another  
9 relationship?

11:25 10 A. After the divorce I was.

11 Q. Okay. Can you tell us a little bit about that  
12 relationship? Because it's going to bear on your name change,  
13 I think.

14 A. Yes. I had -- I was involved with someone that I met and  
11:25 15 this was -- I met him. He was a friend before he became more  
16 than that. I had -- you know, I was going through the divorce  
17 actually when I met him.

18 My then husband applied for a legal separation.  
19 So, we were legally separated. I moved out of the house. We  
11:26 20 were getting a divorce. And we had to have a six-month  
21 separation before we were able to be divorced at the time.

22 And so, I met someone who I thought was a very  
23 good person, who was very good to me in the beginning, he was  
24 very good to Jamie. And then maybe six eight months into the  
11:26 25 relationship, I learned that he was -- you know, his true

11:26 1 colors, so to speak, came out. He was abusive. He caused  
2 bodily harm on me physically. And he did spend time in jail  
3 for that. He was -- he was arrested.

4 And long story short, in order to protect myself,  
11:27 5 he was -- he was stalking me, he was showing up at places where  
6 I frequent. I couldn't get away from him, and I was afraid.  
7 And so, I went and sought some assistance from the women's --  
8 I'm not sure the name of it, Domestic Violence Center in  
9 Houston. And they suggested that I change my name in order to  
11:27 10 protect myself.

11 Q. What was your name at the time?

12 A. It was Cindy Jones.

13 Q. What did you change it to?

14 A. Breanna Morgan.

11:27 15 Q. And that is your name today?

16 A. Yes.

17 Q. Did this gentleman or this man that you referred to ever  
18 cause any physical injury to Jamie?

19 A. Not physical injury to Jamie, no.

11:27 20 Q. Okay. When you say "not physical," can you explain that a  
21 little more?

22 A. No. Well, it wasn't physical injury. She witnessed him  
23 not being kind to me and abusive verbally to me, which wasn't  
24 good. And that was just a really hard, hard, you know, time in  
11:28 25 my life because I was with someone that I could not get away

11:28 1 from and she was subjected to and witnessed some of his, you  
2 know, behaviors and she was -- and I understand, you know, she  
3 was, you know, a young child and she turned him in to CPS,  
4 Child Protective Services. So, she tried, you know, that  
11:28 5 avenue.

6 So, that kind of opened up the -- you know, the  
7 eyes of, you know, what am I going to do to to pursue getting  
8 away, you know. Because my daughter was more important and her  
9 health and safety than -- and mine, and I wasn't sure what to  
11:29 10 do. I was afraid if I -- when he did end up, you know,  
11 injuring me to the point where he had to spend time in jail, I  
12 was afraid if I prosecuted him at the time, he would eventually  
13 get out and cause me greater harm. So, I was kind of stuck  
14 with what do I do. I didn't know what to do.

11:29 15 And my ex-husband ended up -- he did help me, you  
16 know, go through the name change processes. And so, he was  
17 very supportive of that. And -- anyway, I -- it was just a  
18 really, really hard time; and I feel bad. I went through a  
19 divorce. I was with her father for 20 years. And then I took  
11:29 20 her into that situation. I feel like that wasn't fair to  
21 Jamie, and I felt bad since. I made a poor decision. I  
22 misread someone.

23 Q. Sorry about that.

24 A. So --

11:29 25 Q. I want to talk about your -- you mentioned something with

1 health and welfare minute ago, but I want to talk about your  
2 health.

3 A. Okay.

4 Q. You've had some health issues --

5 A. Yes.

6 Q. -- in your life. And I want to start particularly with the  
7 year about 2004 and forward.

8 A. Okay.

9 Q. So, you can tell us what was going on with your health in  
10 that year?

11 A. Yes. I had -- I had been diagnosed with diabetes and I was  
12 having some complications with that and I was taking insulin  
13 injections as well as Glucophage orally. And I was taking  
14 that. I had some issues with sleep apnea. I had -- I wasn't  
15 feeling well. I was overweight.

16 And so, I had decided to -- to better my health  
17 to have a surgery, a gastric bypass surgery in February of  
18 2005, which turned out to be a really hard time for myself and  
19 for Jamie because I had complications. So, during between  
20 February 9th of 2005 and June 6th of 2005, I had been in and  
21 out of the hospital. I spent 30 days total in the hospital,  
22 five different visits and had two surgeries.

23 I had the surgery, went home -- this was in  
24 February, February 9th -- went home three days later, went  
25 back -- Jamie actually drove me to the hospital. I almost got

1 a ticket. She got pulled over and -- trying to get me down to  
2 the Medical Center as soon as she could. And I was back in the  
3 hospital 16 days.

4 I had an intestinal leak at the time; and I had  
5 to go through the IV tubes, feeding tubes, for 16 days. So, I  
6 didn't -- couldn't eat. And -- and so, you know, Jamie was  
7 there, you know, supporting me through all of this. And I lost  
8 a lot of the weight really, really quickly. So, I was really  
9 weak, really sick. And then I kept going, you know, back and  
10 forth to the hospital with complications.

11 And then ultimately June 6th, they found a  
12 contained leak between my stomach and intestines and then had  
13 to do another six-hour surgery to repair it.

14 Q. Just to be clear, this is June 6th of 2005?

15 A. It is, yes. This was right before Jamie went -- left for  
16 Baghdad. She left the following month.

17 Q. Right. I want to go back to the year 2004 for just a  
18 moment.

19 A. Okay.

20 Q. Who is Eric Iler?

21 A. Eric Iler was Jamie's former boss, direct boss, at  
22 Halliburton Houston.

23 Q. Do you know whether he and Jamie had a relationship?

24 A. Yes.

25 Q. Okay.

1 A. Yes.

2 Q. What kind of relationship did they have?

3 A. Jamie had a relationship with Eric Iler that I wasn't aware  
4 of what type of relationship it was. I knew that she started,  
5 you know, working for him. You know, I heard his name, you  
6 know, a few times, you know -- you know, here and there. You  
7 know, I think that they went to lunch a few different times.

8 I knew that he was older, he was her boss. I  
9 wasn't sure of his age at the time. And then Jamie was -- you  
10 know, just kind of told me very little really about it. And  
11 then --

12 Q. Were you --

13 A. -- I want to say -- go ahead.

14 Q. I'm sorry. I interrupted you, ma'am, please.

15 A. And then in -- I want to say January maybe 2005, I want to  
16 say, Jamie went into the hospital and she had a sexually  
17 transmitted disease and was really, really sick. And so,  
18 during this hospital stay, she confided -- she broke down and  
19 she told me the extent of their relationship. She told me  
20 what -- what was happening, that she was -- she felt trapped,  
21 that she had -- she said that he basically was forcing her into  
22 a relationship in order for her to keep her job because he knew  
23 that I was not doing well, that I had been very sick, and that  
24 she was trying to help me.

25 And I know that he had offered her, I think,

1 monies at different times. And whenever she told me this, it  
2 was -- it was devastating because I felt bad because I was sick  
3 and I felt like she is doing it for me, in a way. And she  
4 didn't know what to do and she said mom -- I asked her why she  
5 hadn't told me before.

6 And she said: Well, Mom, I was ashamed. I  
7 didn't know how to handle it and I didn't know what to do.

8 And she said: What do I do?

9 And so, I asked her who his boss was; and when  
10 she got out of the hospital, we called him -- his name is  
11 Frederick Heard -- and reported it.

12 Q. So, Frederick Heard was Eric Iler's boss at Halliburton?

13 A. That's what I understood.

14 Q. At Halliburton?

15 A. Yeah.

16 Q. Before you knew that the relationship was physical between  
17 Jamie and Eric, were you supportive of that relationship?

18 A. Well, I didn't really understand the extent of it. I

19 didn't have an understanding. So, it wasn't that I was

20 supportive or not supportive. I just felt like he was, you

21 know, taking her to lunches. She was very young. To me she  
22 was a child.

23 Q. How old was she?

24 A. She was 19, I believe, at the time.

25 Q. Do you know how old Eric was?

11:36 1 A. He was close to my age. I'm 47. He was around my age.  
2 Q. So --  
3 A. To me --  
4 Q. To be fair, that would be -- he would have been around --  
11:36 5 let's see. That was 2004. So, he would have been around  
6 40 years old?  
7 A. Uh-huh.  
8 Q. Is that right?  
9 A. About, yeah, uh-huh.  
11:36 10 Q. Okay. Thank you. Please go ahead. You said to you -- I'm  
11 sorry.  
12 A. So, at that time I felt like, you know -- you know, as an  
13 adult, you know, I started, you know, thinking about -- you  
14 know, started thinking about, okay, so, over the course of  
11:37 15 these several months that, you know, they were going to lunches  
16 and I just felt like he was manipulating her, you know, all  
17 along. I didn't realize it because I wasn't aware of  
18 everything that was going on or to the extent of everything  
19 going on.  
11:37 20 And I was very angry when I found out. I was  
21 very angry. Because to me I felt like, you know, she was --  
22 she was a child. And -- and at that age, a very impressionable  
23 and I felt like Jamie was. You know, while Jamie was a very  
24 bright young lady, I still felt like she was just, you know,  
11:37 25 going out into the world really at that time, you know.



11:37 1 Q. Yes?

2 A. And she was still looking up to her elders, you know, like,  
3 you know, my age and adults. She was still looking up to them  
4 for guidance and support.

11:38 5 Q. While Jamie was 19 -- and we're moving ahead now to 2005.  
6 Okay?

7 A. Okay.

8 Q. So, in that year she -- later is when you told us you had  
9 surgery in June. And right about then, a month later, was when  
11:38 10 Jamie was going to deploy to Iraq?

11 A. Right.

12 Q. How did you feel about Jamie going to Iraq?

13 A. I was sad that she was going to Iraq. I supported her  
14 because this is something that, you know, she was going to do.  
11:38 15 She wanted to get away from Eric Iler. And so, she felt like  
16 that was one way, was to go to Iraq.

17 I wasn't happy because she was going to be so far  
18 from me, and I'm very protective. I would classify myself as  
19 an overprotective mother, and I still am. I'm that way with my  
11:39 20 grandchildren and her. If they sneeze, I'm going to run them  
21 off to the doctor. And I -- I supported her because it's  
22 something that she wanted to do.

23 Q. What were your fears? You said you were concerned. What  
24 were your fears? What were your fears about her being in Iraq?

11:39 25 A. Insurgency, she would be hurt.

11:39 1 MR. KELLY: Let me get the poster down, Judge. I just  
2 realized I left it up.

3 THE COURT: Okay.

4 MR. ESTEFAN: Thank you.

11:39 5 BY MR. ESTEFAN:

6 Q. You speak a little softly.

7 A. Okay.

8 Q. If you can just pull that mike up a little higher.

9 A. Is that good? Can you hear me better?

11:39 10 Q. They can, and that's what matters.

11 A. Okay. Okay.

12 Q. So, your fears were -- I'm sorry. You said what?

13 Insurgency and was there something else?

14 A. I was afraid -- Jamie had learned that Eric Iler was going  
11:40 15 to follow her over to Baghdad; and so, I was in fear that he  
16 was going, too. And this was prior to her departure.

17 And, so, I again contacted Frederick Heard and  
18 said that, you know, "She's going over there to get away from  
19 him. Please do not allow him to go over there because I don't  
11:40 20 know what she -- I don't know what will happen if he does."

21 And, so, I was in fear of that. And he promised  
22 us that that wouldn't happen.

23 Q. Well, Jamie made it safely to Baghdad?

24 A. She did.

11:40 25 Q. And did you and she begin to communicate after she got

11:40

1 there by -- and how?

2 A. We communicated via telephone and via e-mail.

3 Q. How long was Jamie there before you found out what brings  
4 us all into this courtroom, about the event that brings us all  
5 into this courtroom?

11:41

6 A. Approximately four days.

7 Q. How did you find that out?

8 A. Jamie called.

9 Q. Did she call you directly?

11:41

10 A. She called me, yes.

11 Q. Can you -- I know it's difficult, but I would like to take  
12 you back to that time. All right?

13 A. Okay.

14 Q. Can you remember getting the phone call?

11:41

15 A. I remember getting the phone call.

16 Q. Where are -- and if we're taking that phone call right now,  
17 Ms. Morgan, where are you standing when the phone rings? Are  
18 you in your home?

19 A. Yes.

11:41

20 Q. And you answer the phone and --

21 A. I answer the phone and she said, "Mom, you're going to be  
22 sad when I tell you what I need to tell you."

23 And I said, "What?"

24 And she said, "You're going to be sad when I tell  
25 you what I have to tell you."

11:41

1 And then she went on to tell me that she had been  
2 assaulted. And I think at that time -- I mean, I was kind of  
3 freaking out, "Are you okay? Are you hurt?"

4 I was asking like a million questions. I don't  
5 know what I wanted, just a bunch of things. I can't remember  
6 exactly.

7 And then I thought, "Oh, my gosh, you know, what  
8 are we going to do?" Because she was far away. And I -- I  
9 don't -- I don't remember all of the conversation. And I think  
10 that a lot of some of the things that happened and that were --  
11 that were said around that timeline -- I mean, I tried so hard  
12 to forget. It's just too painful for me to think about.

13 Q. Understood.

14 Do you know what you did after you hung the phone  
15 up with Jamie?

16 A. I had communicated with her father. Her father had already  
17 started working on -- he had been in contact with  
18 Congressman Poe, I believe, already. And he had tried to reach  
19 me, and I guess he couldn't. And, so, he was trying to get her  
20 out of there. He was trying to get her out of Baghdad, I  
21 believe.

22 And forgive me if my timelines are confusing  
23 because I don't remember exactly the days and the times and  
24 things like that.

25 Q. KBR arranged for her to come home from Baghdad?

1 A. KBR? No.

2 Q. Well, what I mean is -- I think you referenced Ted Poe, but  
3 KBR actually provided the transportation -- or am I wrong about  
4 that -- from Baghdad back to Houston?

5 A. Okay. I believe so, under the ticket that she originally  
6 went over on. But she had to be -- Congressman Poe's office  
7 was contacted by my ex-husband, Tom Jones; and they sent, I  
8 believe it was, the State Department over to find her and  
9 rescued her. We weren't sure where -- I didn't know where she  
10 was. I knew she was -- she told me that she was in, I guess, a  
11 shipping container and --

12 Q. Were you being kept up -- were you being kept informed of  
13 the details of the day-to-day happenings with your daughter in  
14 Iraq?

15 A. No. Not at first, no. We had -- you know, during that  
16 time, whenever she was discovered over there and we did have --  
17 you know, the State Department, I guess, had taken over, I know  
18 that -- you know, her dad had told me that -- and this was --  
19 let's see. What was her name --

20 MS. VORPAHL: Your Honor, I'm going to object to the  
21 hearsay testimony. Her father, I understand, is going to be  
22 here to testify; and he can testify as to his own comments.

23 THE COURT: That's true for anything offered for the  
24 truth of the matter asserted. I thought counsel was trying to  
25 bring out what she was told, not for the fact of the truth but

11:45 1 for the fact that she was told that. But I know you'll remain  
2 aware of that distinction.

3 MR. ESTEFAN: I will, your Honor.

4 BY MR. ESTEFAN:

11:45 5 Q. So, Ms. Morgan, were there any other contacts by you to  
6 anybody at Camp Hope in Baghdad about your daughter's  
7 situation?

8 A. I spoke to the State Department on the phone. I'm not -- I  
9 can't recall the name right now. I was concerned about if she  
11:45 10 was eating, she was drinking. He told me that she hadn't  
11 eaten. And I said, "Please, please, you know, try to get her  
12 to drink or eat."

13 I said, "Please just try -- just, you know, try  
14 to get her to eat," because by then she hadn't eaten for quite  
11:46 15 some time and she was sickly, I guess, and didn't feel like  
16 eating. But he was able to get her to eat a bite of a kiwi.  
17 So, he felt like that was even a great accomplishment at that  
18 point.

19 Q. Did the State Department then -- is it your impression that  
11:46 20 they arranged for Jamie to come home?

21 A. Through Congressman Ted Poe's office.

22 Q. Okay. When Jamie -- Jamie flew in to Houston?

23 A. Yes.

24 Q. Which airport?

11:46 25 A. IAH.

11:46 1 Q. Who was there to meet her?

2 A. Her father and I.

3 Q. Can you tell me about that? Tell us all about that  
4 reunion.

11:46 5 A. Yes. At the time she was coming in, I was still very weak  
6 and sick. And he came over to pick me up. We were, of course,  
7 divorced. And we waited at the airport for her to go through  
8 customs. And when we saw her, I mean, it was just awesome to  
9 see that she was just, you know -- after all that anticipation  
11:47 10 of whether we would see her or not see her or her condition.  
11 And, you know, of course, we ran up and hugged her.

12 And I don't know when she had bathed last, but  
13 she had -- she was very dirty and body odor and -- you know, I  
14 knew that she had been through a terrible ordeal just by  
11:47 15 looking at her.

16 Q. You said you and your ex-husband, Tom, Jamie's dad --

17 A. Yes.

18 Q. -- and -- and Jamie was there. Was there anyone else  
19 traveling with Jamie when you-all saw her at the airport?

11:47 20 A. I believe -- yes. I'm not sure of the girl's -- there was  
21 someone there with Halliburton/KBR, I believe. And I can't  
22 recall the name. I'm not sure who it was.

23 Q. Did you have any conversations with that person?

24 A. Very brief if -- but I don't recall what they were. I was  
11:48 25 just so focused on Jamie at the time. I don't recall.

11:48 1 Q. Can you tell us how Jamie was different after she came back  
2 from Iraq than the daughter that left for Iraq?

3 A. Yes. Jamie had trouble sleeping. She was staying with me.  
4 She had trouble sleeping. She had trouble eating. She didn't  
11:48 5 want to be alone. She didn't want the lights to be off. And  
6 when she would try to sleep, she had -- she would complain  
7 about her chest because her chest would hurt.

8 She -- "Mom, I can't get comfortable." She would  
9 lay one direction, lay another direction. And it was -- it was  
11:49 10 very difficult. She was very hypervigilant. If I -- she  
11 didn't want to go anywhere by herself. So, I would -- we just  
12 went to Wal-Mart, you know. She was just always, you know,  
13 looking around and always, you know, afraid. She was -- just  
14 always seemed to be afraid after that.

11:49 15 She was different. I would say, "What's wrong?  
16 What's wrong?"

17 And she would say, "I'm okay, Mom."

18 Or -- but I could tell she was always on like the  
19 lookout. You know? And so, that was -- that was difficult.

11:49 20 And she would stay up really late at night, you  
21 know, playing the guitar, that she didn't want to hear the  
22 quiet of the night. And so, I often slept near her. So, I had  
23 trouble. I would listen to her being up all night and then I  
24 would go to work the next day and then I would go -- because I  
11:50 25 was working at Continental Airlines at the time. I was working



1 quite a few hours because I was trying to support the both of  
2 us, you know.

3 So, I had went from -- I was off for a time and  
4 then it was time for me to go back to work. And, so, I went to  
5 work. And I still was not feeling the greatest, still pretty  
6 weak; but my focus was her. You know, I thought, "Oh, my gosh,  
7 I had to get over -- I have to get better as fast as I can  
8 because my daughter needs me."

9 So, I didn't want her to be bogged down with me,  
10 with my health issues, because to me hers were greater. And  
11 so, I would leave work and then go pick her up at 1488 in  
12 Conroe and drive all the way down to the Galleria a couple of  
13 times a week for therapy. I did find her a therapist that  
14 specializes in post-traumatic stress syndrome. I had no idea  
15 that's what she had prior because I'd not known anyone in my  
16 life that ever had it, and I didn't know anything about what it  
17 even was.

18 And so, I would take her a couple of times a week  
19 and, you know, wasn't sleeping very much myself and trying to  
20 be the best parent that I could. But she was very, very  
21 different and very sad.

22 And -- I mean, at one point I bought her a dog  
23 just to try to get her to go outside the apartment when I would  
24 be at work during the day. She didn't want to leave -- she  
25 didn't want to leave the apartment. I would come home -- I

11:51 1 would leave for work and then I would come home and she would  
2 just be laying down and not showered and this wasn't at all the  
3 Jamie that I knew before.

4 Q. She was living in your apartment when she came back?

11:52 5 A. Uh-huh, yes.

6 Q. Did you and Jamie eventually get a bigger apartment  
7 together?

8 A. We did, yes, a two-bedroom from a one-bedroom.

9 Q. And it sounds like -- well, was there a change, a dramatic  
11:52 10 change, in you-all's -- in the relationship that you had with  
11 your daughter?

12 A. Yes. We -- Jamie, you know, had some -- you know, some --  
13 she was different when she came back. She was more -- she was,  
14 like, shorter, you know, even with me, you know, in responses  
11:52 15 or -- when I would talk to her and even when we went to  
16 therapy. At first she wouldn't talk about it, you know, even  
17 to her therapist. And we decided to move into a two-bedroom  
18 apartment. And, you know, it had more space.

19 And at that time I was working at Continental. I  
11:53 20 was making \$13.25 an hour. So, I wasn't making very much. And  
21 then at one point, you know, we decided to -- you know, to move  
22 into a bigger place.

23 Q. You may need to speak up just a little bit.

24 A. We decided to move into a bigger apartment.

11:53 25 Q. Yes.

11:53 1 A. And she had agreed to pay the difference. It was \$300, I  
2 believe. And she said, "Okay. Mom, I'll "-- so, she wrote me  
3 12 postdated checks, I believe, for one year.

4 Q. One for each month?

11:53 5 A. Yes. Yeah. She wrote all those out, and we moved. And  
6 she had decided, then, at one point -- you know, she had met --  
7 you know, over time she met Kallan and -- which, you know, was  
8 really awesome for her.

9 Q. We're going to talk about that in a second. So, she has  
11:54 10 given you these postdated checks?

11 A. Yes.

12 Q. And now did you say she moved out?

13 A. She eventually moved out of the two-bedroom apartment. And  
14 with the postdated checks, she had moved out and we had never  
11:54 15 really discussed that. I was under the impression that she had  
16 written me these checks because she knew -- you know, just  
17 under the assumption I couldn't afford the difference. And  
18 then I went ahead and I think I cashed one or two of them. I'm  
19 not even sure now. It's been such a long time ago. And then  
11:54 20 we had -- Jamie and I had a disagreement about that during that  
21 time.

22 Q. There's a note in one of Jamie's doctor's records to the  
23 effect that she said that you stole money from her. Is that  
24 what she's talking about?

11:55 25 A. She may have believed that, yes. And Jamie may have felt

11:55 1 that way, that I was stealing money from her. That may have  
2 been very well what she thought at the time.

3 Q. What kinds of not-at-the-doctor-office treatment or therapy  
4 or anything else did Jamie do to try and come back from what  
11:55 5 she had been through in Iraq?

6 A. Jamie started painting. She started, you know, painting,  
7 expressing herself through painting. She also started writing.  
8 Right at first she wouldn't talk about what happened to her in  
9 Baghdad. She started writing -- I asked her to put her  
11:55 10 thoughts down in writing. So, on my home computer she started  
11 journaling. So, at first -- I believe we called it  
12 "journaling."

13 "Can you journal? Can you just write things  
14 down?"

11:56 15 I wanted her to get better. I wanted her to  
16 start healing, and I felt like we weren't making a whole lot of  
17 progress yet. And so, I'd rack my brain what -- you know,  
18 because I'm not a therapist or a doctor. So, I wasn't sure  
19 what to do. As a mom, I thought, "Well, what would help?  
11:56 20 Journaling, writing your thoughts down. If you can't talk  
21 about it to someone else, jot them down."

22 So, she started writing them down. And I told  
23 her I wouldn't look at it until she wanted me to. She could  
24 put it in a folder, she could lock it in the computer, whatever  
11:56 25 she wanted to do, had my word I wouldn't even look at it.

11:56 1 She'll talk to me when she wants to talk to me about those  
2 things.

3 And, so, she -- she started doing that. She took  
4 me up on that. She started, you know, journaling her thoughts  
11:56 5 down in third party. And I didn't realize it at the time; but  
6 later on when I was able to look at it and I was helping her --  
7 like, I started helping her, you know, write it out. And  
8 mostly I started helping her -- was for support efforts, to do  
9 something with her, to join -- you know, to join her in  
11:57 10 something, to be a part of it with her.

11 You know, I didn't want her to feel like she was  
12 going through all of this by herself. I never wanted her to  
13 think that. Even when she would get upset with me sometimes,  
14 you know, because she was kind of -- it was difficult sometimes  
11:57 15 for her, you know. You know, seeing someone live with PTSD is  
16 not easy.

17 Q. Right.

18 A. You know, when you see the changes of a child that you've  
19 raised from a baby up until, you know, 20 years old and you see  
11:57 20 that they drastic -- I mean, I put her on an airplane and she  
21 comes -- five days later? You know, and to see the change was  
22 just horrific for me.

23 Q. Did that journaling eventually turn into something else?

24 A. Yes, it ended up turning into a book, I guess you would  
11:58 25 call it. We -- she started journaling her thoughts down. She

1 eventually met Kallan. I think he contributed some then to the  
2 book, too, different parts here and there. And it just became  
3 like a journaling -- when she was -- let me back up a little  
4 bit.

5 When she was gone, her first five days of being  
6 gone, I mean, I never thought she was going to be coming back  
7 in five days. So, I started keeping what I called was a  
8 scrapbook. I had her airline tickets, I believe, in it, maybe  
9 some e-mail exchanges between us. So, I just -- I wanted to  
10 keep that for her and surprise her with it when she comes back,  
11 you know, that this was like her journey, you know, and  
12 that -- so, I wanted to still be close to her even though we  
13 were so far apart and surprise her with the book when she got  
14 back, like a scrapbook type thing that, you know -- to give to  
15 her to keep.

16 And so -- but when she did come back, I did give  
17 it to her and I believe -- I believe she had given it to you  
18 and Mr. Kelly.

19 Q. Yes. Is this book like a published book, or is it still  
20 manuscript form?

21 A. It's not a published book, not to my knowledge.

22 Q. Did anyone else take an interest in the story and want to  
23 make the book into a movie or anything else?

24 A. This -- there -- I'm sure that there might have been. I'm  
25 not -- I'm not sure. I mean, there's not a movie in the making

11:59 1 right now that I'm aware of.

2 Q. As Jamie got a little stronger, I guess, through your  
3 efforts and the efforts of her doctors helping her, did she  
4 start reaching out to help others?

12:00 5 A. Yes. She -- back in maybe October, November of 2007, she  
6 started the Jamie Leigh Jones Foundation in efforts to -- at  
7 that point we had realized that -- through all of our efforts  
8 to try to seek justice through the State Department, the  
9 Department of Justice, Halliburton/KBR, that we weren't really  
12:00 10 getting anywhere. And -- or, you know, what do victims do of  
11 violent crimes with contractors? They needed an outlet of some  
12 sort, we felt like, because she didn't have any resources when  
13 this happened to her.

14 It was kind of, "What do we do? Where do we go?"  
12:01 15 It had been such a long learning process. You know, "Where do  
16 we go?" Because, you know, we go to one -- one party, you  
17 know, like the State Department, then we go to the Department  
18 of Justice and then one would tell us to go to the other one.  
19 And we were just kind of all over the place. We didn't know  
12:01 20 what to do or where to go to seek refuge or resources or what  
21 to do.

22 Q. Right.

23 A. We were told there's no -- we don't know who had  
24 jurisdiction here or there. So, we were just kind of all over  
12:01 25 the place. And so, we thought, well, maybe we could help, you

1 know, by opening the foundation, be a resource center for  
2 others because we didn't want anybody else to be in the same  
3 position that we were in.

4 Q. You mentioned this was going on by 2007. But, by then, was  
5 Jamie married?

6 A. Yes. She had gotten married September 1 of 2006.

7 Q. I understand that you get the credit for introducing Kallan  
8 and Jamie. Can you tell us how that happened?

9 A. Yes. Yes.

10 Q. Please.

11 A. In my efforts to get Jamie out of the apartment, which was  
12 really trying at times, I lived in an apartment where on every  
13 Friday they had -- at the club they had like a little  
14 get-together, you know, from just the area residents. And so,

15 I encouraged Jamie -- I mean, I had asked her several times,  
16 "Why don't we just walk down there" -- because it's, I don't  
17 know, maybe 500 feet from our door to the clubhouse, said, "Why  
18 don't we walk down there and we don't have to stay. We'll just  
19 go in and meet some neighbors. It will be a nice thing for you  
20 to do."

21 And so, we went down and we were there for a  
22 little bit and we were just, you know, sitting and talking.  
23 And I could tell she wasn't -- you know, we talked to a few  
24 people, not a lot. I could tell she was just still reserved.  
25 And, so, you know, I certainly understood that, you know; but



1 at least she was out. I'm like, "Oh, we're out. This is a  
2 great thing."

3 Q. Right.

4 A. So, as we were there, sitting there, you know, we were  
5 talking. Kallan had asked us -- we were getting ready to  
6 leave, and it was dark. And he said, "You know, do you want me  
7 to walk you ladies home," because it was dark, you know,  
8 outside.

9 And, of course, I said, "Oh, we'll be fine."

10 And, of course, he wanted to make sure that we  
11 were okay, you know. That's Kallan. He's -- now that I know  
12 Kallan -- I didn't know him then the way I know him now -- I  
13 see why, you know, he was concerned. He's just that way.

14 And, so, he ended up, you know, walking with us  
15 and walking, like, behind. And Jamie wasn't paying any  
16 attention to him whatsoever at the time. Okay? And, so, you  
17 know, we walked up, we went to the apartment. She goes on up  
18 into the apartment. And he's like, you know, walking behind,  
19 just making sure that we were all right.

20 And then as soon as she goes in, he asked me --  
21 he said, "Can I ask you something?"

22 And, so, I said, "Well, sure."

23 And I said, "Thank you for walking us home."

24 And he said -- you know, he said, "I -- you know,  
25 I overheard some of what you-all were talking about," you know,

12:04 1 because Jamie had -- was talking to me when we were sitting  
2 down and she was talking about it a little bit. Because any  
3 time Jamie was willing to talk, I was willing to listen.  
4 Because it wasn't very many times that she would be willing to  
12:04 5 talk about it. It was real hard for her and she would get  
6 emotional and she would be crying, which she was.

7 And he said, you -- know, he said, "I know that  
8 she had gone through some hard times, but I would just like to  
9 be her friend," you know, and that's all. He said, "I would  
12:05 10 just like to be her friend and to be supportive," because he  
11 said she just seemed sad.

12 And I said, "Well, you know, okay."

13 He said, "Here's my number." He said, "You know,  
14 whenever -- if you feel like, you know, she would be willing  
12:05 15 to -- need somebody to talk to, you feel free to give it to  
16 her," you know.

17 And, so, you know, by the time I got to the, you  
18 know -- you know, my apartment was, like, you walk up the  
19 stairs. And I walked up the stairwell, talked to her a little  
12:05 20 bit; and she went to sleep.

21 And, so, the next day -- I don't know -- maybe at  
22 noon or something, I thought about it. And I said -- you know,  
23 I said, "You remember Kallan? I don't know if you remember  
24 him. He was walking, you know, with us or you weren't paying  
12:05 25 attention. I was kind of talking to him a little bit." And I

12:05 1 said -- I didn't know if she had talked to him a little bit at  
2 all because I don't recall. But --

3 And she said, "Yeah."

4 And I said, "Well, he wanted to know if -- he  
12:06 5 would like to be your friend. You know, he kind of overheard  
6 us just a little bit talking and knew that you had some  
7 situation that you were in and you were sad. And if you would  
8 like to call him, I've got his number, you know."

9 And, so, anyway, I asked him, you know, during --  
12:06 10 during the time -- let me back up a little bit.

11 During the time when he gave me the number, you  
12 know, I said she went through a terrible ordeal and she  
13 probably wouldn't want to be alone with anyone right now,  
14 especially a male. I'm having trouble just getting her out.  
12:06 15 So, he kind of knew a little bit.

16 So, the next day, whenever she called him -- she  
17 did call, which I was surprised, you know, that she did. And,  
18 you know, he invited both of us to -- it was kind of  
19 interesting because he invited both of us over to his parents'  
12:07 20 house for dinner, you know, to a cookout. And I thought, "Wow,  
21 that's pretty impressive," because he had never spent any time  
22 alone with her or me.

23 And, so, I went out with both of them, like, for  
24 a good long time together, you know. And he was just a really  
12:07 25 good friend to her for quite some time.

1 And then eventually they became more -- as time  
2 went on, you know, she trusted him and they had to -- you know,  
3 she built -- they built trust, I guess, after awhile. And then  
4 she became more comfortable with him. But that was -- it was a  
5 blessing at the time really, a really good blessing.

6 Q. When Jamie went to Iraq, she had a high school degree?

7 A. Yes, she did.

8 Q. Well, that's changed a little bit?

9 A. It has, yes.

10 Q. What -- what is her -- what has she done with her education  
11 since she's been back?

12 A. She has her MBA and she has gone to school and she's very  
13 well educated now. I'm very proud of her. And she is a  
14 professor and -- at a university here in Houston, and I'm very  
15 proud of that.

16 Actually, one of my very good friends, we're both  
17 on the Transportation Club International Committee.

18 Q. Yes.

19 A. And he also belonged to National Transportation Week. He  
20 is the business chair and he's one of my friends and he hired

21 Jamie. And, you know -- so, he knows Jamie, a little bit of  
22 what happened to Jamie. And he has become her mentor. So, she  
23 feels good about her position and, you know, where she's at and  
24 he's looking out for her, too, you know, because she's still  
25 very apprehensive about, you know, driving alone, being around

1 people. We have to work really hard to make her feel  
2 comfortable, even now.

3 Q. Before -- I'm sorry, Ms. Morgan. I didn't mean to cut you  
4 off.

5 A. That's okay.

6 Q. Before she started teaching at U of H, she started teaching  
7 at another place?

8 A. Yes.

9 Q. Where was that?

10 A. Kingwood -- Christian School of Kingwood, I believe is the  
11 name.

12 Q. It's a small Christian school?

13 A. Very small, yes.

14 Q. Did she have her MBA when she began teaching at the  
15 Christian school, or did she get that after?

16 A. She -- I'm trying to -- I believe she was still working on  
17 it, I believe, I want to say. But she -- I'm not quite sure if  
18 she already had it or was still working towards it. But she  
19 worked there and she felt very comfortable. It was so small,  
20 everyone was so close. So, she felt good about working there.

21 And, you know, I've gone out there. I met some  
22 of her students; and they all really adored her. So, it was  
23 just really nice and refreshing to go out there and see that.

24 Q. I remember you coming to my office once and you had a  
25 bracelet on. Are you still wearing that bracelet?

1 A. I don't have it on today.

2 Q. What was the significance of that bracelet?

3 A. Jamie and I both have the bracelet. It was a bracelet  
4 Jamie had given me; and so, we both just wear it to be close.

5 Q. How close are you with Jamie today?

6 A. Very close.

7 Q. How often do you see her?

8 A. A lot. I have -- I take care of the grandbabies at least  
9 once a weekend evening. They have been staying with me

10 throughout this trial. And I've been keeping the grandbabies  
11 most every day, I think, with the exception of maybe yesterday,  
12 I want to say. So --

13 Q. Thank you, Ms. Morgan. Hold on one second, please.

14 MR. ESTEFAN: I'll pass the witness, your Honor.

15 THE COURT: Thank you very much.

16 Who would like to inquire? Ms. Cullen? All  
17 right.

18 MR. ESTEFAN: Judge, the jurors are asking for lunch.

19 THE COURT: You want lunch now? Okay. Why don't we  
20 try to be back here by 1:00 o'clock.

21 Oh, an hour? Okay. 1:15 then. I've just been  
22 told you need an hour. Okay.

23 *(Recess was taken from 12:11 p.m. to 1:15 p.m.)*

24 MR. MCKINNEY: Judge, the exhibits offered into  
25 evidence, like the DOS report and whatnot, they were under some

01:17 1 sort of DOJ limitation before we offered them and then they  
2 became part of the record. Are they now public records?

3 THE COURT: Well, we can seal them if you want to.

4 MR. McKINNEY: I don't want to seal them. I'm asking  
01:17 5 are they now public records?

6 THE COURT: We'll seal them. If you give me exhibit  
7 numbers, we'll seal them.

8 MR. McKINNEY: I'm actually not requesting that they  
9 be sealed. I'm requesting the opposite. I would like them to  
01:17 10 be public records.

11 THE COURT: You-all talk about this before you bring  
12 it to me.

13 MR. McKINNEY: Okay.

14 *(Jury present)*

01:18 15 THE COURT: Thank you, ladies and gentlemen of the  
16 jury. Please be seated.

17 All right. You may resume your inquiry.

18 MR. ESTEFAN: I pass the witness, your Honor.

19 THE COURT: All right.

01:18 20 Ms. Cullen, you next?

21 MS. CULLEN: Yes, your Honor.

22 **CROSS-EXAMINATION**

23 BY MS. CULLEN:

24 Q. Good afternoon, Ms. Morgan.

01:18 25 A. Good afternoon.

01:18 1 Q. I think we met at your deposition some months ago.

2 A. Yes.

3 Q. I'm Sharon Cullen. I represent Charles Bortz. I want to  
4 clarify some of the information that you gave us when  
01:18 5 Mr. Estefan was asking you questions.

6 I understand that you were divorced from  
7 Ms. Jones' father in October of 2000. Is that right?

8 A. Correct.

9 Q. And you became involved with a gentleman, who later proved  
01:19 10 to be abusive, while you were separated from her father in --  
11 roughly, just before the divorce was final, I would assume, in  
12 October of 2000. Is that right?

13 A. Correct.

14 Q. You did not get your name changed as a result of the abuser  
01:19 15 until 2003, correct?

16 A. Correct.

17 Q. Is it fair to assume that your relationship with him lasted  
18 for approximately three years?

19 A. Well, we -- no, not -- no. I was trying to get away from  
01:20 20 him for quite some time before I changed my name.

21 Q. So, if one includes from the very beginning, when you  
22 didn't realize he would be abusive, until the time you actually  
23 got free of him and changed your name, that entire  
24 relationship -- growing, declining, and putting an end to it --  
01:20 25 was about three years?



01:20

1 A. Thereabouts perhaps.

2 Q. And during part of that time, you lived together?

3 A. Yes.

4 Q. And Jamie lived with you?

01:20

5 A. Yes.

6 Q. We know from the medical records that by August of 2002,  
7 Jamie had told her father that she reported herself to CPS,  
8 correct?

9 A. Thereabouts. I don't know the date, but --

01:20

10 Q. Did she tell you that she had reported herself to  
11 Children's Protective Services?

12 A. I believe she did.

13 Q. Did she tell you what the nature of her report was?

14 A. She did.

01:20

15 Q. What did she tell you she reported to Children's Protective  
16 Services?

17 A. She was -- she was concerned about my safety and perhaps  
18 her own with the abusive boyfriend that I had.

19 Q. And as a result of reporting that she was in fear for your  
01:21 20 safety as well as her own safety to Children's Protective  
21 Services, did you receive a visit from an investigator from  
22 CPS?

23 A. I didn't.

24 Q. Did you receive a telephone call from an investigator for  
01:21 25 CPS?

01:21

1 A. I didn't.

2 Q. Did you receive a letter from an investigator for  
3 Children's Protective Services?

4 A. I did not.

01:21

5 Q. Do you know if your husband received any contact from an  
6 investigator for Children's Protective Services?

7 A. He may have.

8 Q. You don't know?

9 A. I'm not sure. She was using his address a lot; so,  
10 perhaps. But I'm not -- I don't -- I'm not sure.

01:22

11 Q. But it's your understanding that it was your abusive  
12 live-in boyfriend that was the basis of her report to  
13 Children's Protective Services?

14 A. Yes.

01:22

15 Q. So far as you know, Children's Protective Services never  
16 took any action or made any investigation whatsoever?

17 A. No. But I believe she had done this, perhaps, maybe  
18 through her school. I had at some point talked to someone at  
19 her school about it but not to CPS directly.

01:22

20 Q. So far as you know, CPS never took any action?

21 A. No.

22 Q. I understand from your testimony with Mr. Estefan that at  
23 some point, Jamie removed herself from your home by moving in  
24 with her boyfriend. Is that correct?

01:23

25 A. I'm not sure.

01:23 1 Q. You know that she did move in with her boyfriend?

2 A. Which boyfriend are you referring to?

3 Q. The one you just testified about.

4 A. Which boyfriend, please?

01:23 5 THE COURT: Let's assume she's talking about  
6 Mr. Daigle.

7 MS. CULLEN: Actually, this is long before Mr. Daigle;  
8 and neither Ms. Jones or Ms. Morgan seems to remember the name  
9 of the boyfriend she moved in with during that time period.

01:23 10 THE COURT: Oh, I'm sorry.

11 BY MS. CULLEN:

12 Q. During the period all this was happening and the abusive  
13 boyfriend was there and she reported herself in August 2002,  
14 Jamie was 17 years old. Is that correct?

01:23 15 A. Perhaps.

16 Q. What's your daughter's birthday?

17 A. December 13.

18 Q. Of what year?

19 A. 1984.

01:24 20 Q. So, in August of 2002, she was 17?

21 A. She was.

22 17. Do you have the CPS report?

23 THE COURT: She gets to ask the questions. Your  
24 lawyer can follow up with you on that.

01:24 25 THE WITNESS: Okay.

01:24 1 BY MS. CULLEN:

2 Q. You've testified that you and your daughter were very close  
3 during her teenage years. Is that correct?

4 A. Yes.

01:24 5 Q. You did lots of things together?

6 A. We did.

7 Q. When she was ill, you would take her to the doctor?

8 A. Absolutely.

9 Q. If she needed medication, you would see that it was gotten  
01:24 10 at the pharmacy?

11 A. Or her father.

12 Q. Would you occasionally get her medication for her?

13 A. Occasionally, yes.

14 Q. Is it your testimony that more often it was her father who  
01:24 15 handled these matters?

16 A. It was both of us.

17 Q. Were you aware when your daughter began receiving therapy  
18 for emotional problems?

19 A. When are you referring?

01:25 20 Q. Let's take a look at her -- a summary of her pharmacy  
21 records that's been admitted into evidence. Unfortunately,  
22 it's only from one of the three pharmacies that you-all used.

23 MS. CULLEN: Could we pull up, please, Bortz 247?

24 And if we could enlarge the top portion of the  
01:25 25 page?

01:25

1 BY MS. CULLEN:

2 Q. You see in September 13th of 2000, she was given a  
3 prescription for Ativan?

4 A. I see that.

01:25

5 Q. Did you realize your daughter was taking Ativan?

6 A. I don't recall it. I'm not sure what it is.

7 Q. You're not aware that it's a medication for anxiety?

8 A. I'm not familiar with that drug per se.

9 Q. All right. Why don't we skip down a line, to the second

01:26

10 line under it, November 7th of 2001, Xanax.

11 Are you familiar with Xanax?

12 A. I am.

13 Q. What's your understanding of the usage for Xanax?

14 A. I was just prescribed it over the weekend when I was going  
15 to get some surgery on my eyes, just to relax me.

01:26

16 Q. It's a tranquilizer?

17 A. Uh-huh.

18 Q. Did you know that your daughter was taking Xanax in  
19 November of 2001?

01:26

20 A. I don't recall, no.

21 Q. She would have been 16?

22 A. I don't recall it, no.

23 Q. And if we skip the next line and go to the second line,  
24 again, in October -- on October 11 of 2002 she was taking

01:27

25 Zoloft. Do you know what Zoloft is for?

01:27

1 A. Antidepressant.

2 Q. Correct. Did you realize your daughter was taking  
3 antidepressants in 2002?

4 A. I don't recall it.

01:27

5 Q. And that she refilled that prescription just 20 days later,  
6 was continuing to take Zoloft; and refilled it again  
7 December 20th of 2002, Zoloft; January 25th of 2003, Zoloft.

8 So, she was regularly and routinely, for at least three months,  
9 taking Zoloft -- actually, four months if we go through

01:27

10 January 25th.

11 Was she spending any time with you during those  
12 months?

13 A. She was.

14 Q. And you were just not aware that she was taking a daily  
15 dose of Zoloft?

01:28

16 A. I just don't -- I don't recall it. I don't. I'm sorry.

17 Q. In July of 2003, she began taking Effexor. Were you aware  
18 of that?

19 A. I don't recall it.

01:28

20 Q. And in July -- halfway through the month, she refilled that  
21 prescription, and again in August. So, during those months,  
22 when she was taking Effexor, you were unaware that your  
23 daughter was taking that antidepressant?

24 A. I don't recall it.

01:28

25 Q. Did you know that your daughter was depressed?

01:28 1 A. I don't recall. The only thing that I do recall is when we  
2 went through the divorce she had a difficult time right after,  
3 you know, as any child would at age 14.

4 Q. And how long did it take for her to get her feet back under  
01:29 5 her again after your divorce?

6 A. She -- I would say within the year or so.

7 Q. So, you're surprised to see that three years later she's  
8 still taking antidepressants?

9 A. Well, she was under her father's medical insurance plan.

01:29 10 He did take her to the doctor, or accompany her to the doctor  
11 some, too, filled her prescriptions and things. So, I don't  
12 recall.

13 Q. Even though you were --

14 A. She could have had some issues stemming from -- continuing  
01:29 15 from the divorce. I believe her father took her to a therapist  
16 at some point for that, for -- to handle -- to -- for the  
17 divorce.

18 Q. So, even though you were very close and did lots of things  
19 together, the fact that she was sufficiently depressed to be on  
01:29 20 regular medication for depression three years following your  
21 divorce is something you just didn't know?

22 A. I don't recall.

23 Q. I see that in September of 2003 she's begun on Lamictal.  
24 Do you know about Lamictal?

01:30 25 A. No.

01:30 1 Q. That it can be prescribed for bipolar disorder or perhaps a  
2 seizure disorder?  
3 A. No, I wasn't aware.  
4 Q. You were not aware that your daughter might be suffering  
01:30 5 from either a seizure disorder or a bipolar disorder?  
6 A. No.  
7 Q. And in that same month she's also, along with the Lamictal,  
8 still taking Zoloft. Do you see that?  
9 A. I do, I see it.  
01:30 10 Q. By that point in time, the fall of 2003, did you realize  
11 that your daughter had emotional problems that were requiring  
12 continuous medication with antidepressants?  
13 A. I don't recall it. I don't.  
14 Q. And I believe Lamictal was described by one of our  
01:31 15 witnesses as a mood stabilizer. So, not only antidepressants  
16 but also a strong mood stabilizer, you didn't know that?  
17 A. I don't know anything about Lamictal.  
18 Q. In October of 2003, both the Lamictal and Zoloft  
19 prescriptions were refilled?  
01:31 20 A. Uh-huh.  
21 Q. The Lamictal was refilled again in November. And then in  
22 January -- in December of 2003, if we skip down about three  
23 lines, we see the Zoloft again; and in January of '04, the  
24 Lamictal again. So, clearly this is continuing month to month;  
01:31 25 she's taking these drugs regularly.



01:31 1 In early 2004, did you realize at that point that  
2 your daughter was having problems with mood and depression  
3 sufficient to require regular medication?  
4 A. I wasn't -- I wasn't -- I don't -- I don't recall.

01:32 5 Q. And in September of 2004, we see Topamax appear. Do you  
6 know what Topamax is? I believe you said you had been  
7 prescribed it at one time.  
8 A. Yes, for seizure disorder.

01:32 9 Q. Did you realize your daughter was taking Topamax in the  
10 fall of 2004?  
11 A. Perhaps. I just don't recall all the -- I don't recall the  
12 circumstances. I'm familiar with Topamax because I took it  
13 for -- because I had abnormal EEGs.

01:32 14 Q. Did you know your daughter was diagnosed with a seizure  
15 disorder?  
16 A. I knew that she was tested. I believe mine was from a  
17 surgery and not really a hereditary type thing. So, I --

01:32 18 Q. But what about your daughter?  
19 A. I'm not sure if she was diagnosed or if she wasn't.

01:33 20 Q. If she was, it's not something she shared with you?  
21 A. I know that whenever she went to the doctor, I had always  
22 asked her, "Please be sure to tell your doctor that your mom  
23 has" -- just in the event that it wasn't from a surgery that I  
24 had where I had a lot of blood loss -- "that I could have a  
01:33 25 seizure disorder and it could be hereditary or not," wasn't a

01:33 1 hundred percent sure.

2 So, as part of her medical record, I asked her  
3 always to, you know, say it if she was asked. Same with  
4 diabetes, "Please be sure in your medical history that you  
01:33 5 mention that your mother has diabetes," so that those things  
6 would be obvious so that they would be looking in that  
7 direction if they needed to.

8 Q. Your daughter never told you that she had been diagnosed  
9 with a seizure disorder and prescribed medication for it?

01:33 10 A. I am not a hundred percent sure if -- I just -- I just  
11 don't recall.

12 Q. Then, in September of 2004, again, we have Lamictal again;  
13 and in November, Zoloft.

14 And, then, in December she begins taking Ambien.  
01:34 15 Ambien is a sleep medication, right?

16 A. Yes, uh-huh.

17 Q. Did you realize through the end of 2004 that your daughter  
18 was suffering with depression and having difficulty sleeping?

19 A. I don't recall.

01:34 20 Q. Were you spending any time with your daughter during that  
21 time period?

22 A. I was.

23 Q. And you just -- did you not notice that she was having  
24 problems?

01:34 25 A. I don't recall. I don't recall when she was taking Ambien

01:34 1 at that time.

2 Q. I want to talk with you about a particular visit to one of  
3 Ms. Jones' physicians, when I understand you accompanied her to  
4 the doctor's visit. In particular, that doctor was Dr. Terri  
01:35 5 Scott.

6 A. Okay.

7 MS. CULLEN: Could we pull up Bortz 165, please?

8 Let's enlarge the doctor's handwriting which  
9 begins with, "18-year-old white female."

01:35 10 Come -- there we go.

11 BY MS. CULLEN:

12 Q. And I want to read this note to you.

13 A. Okay.

14 Q. Well, let me ask you first. Do you just remember going  
01:35 15 with your daughter to see Dr. Terri Scott on October 25th of  
16 2004?

17 A. (No response.)

18 Q. Ms. Morgan?

19 A. I'm reading this.

01:36 20 Yes, vaguely.

21 Q. You remember being present at that visit?

22 A. Uh-huh.

23 Q. Well, let's read that note.

24 A. Okay.

01:36 25 Q. "18-year-old white female presents complaining of N/V" --

01:36

1 Do you know what that is?

2 A. No.

3 Q. Nor do I.

4 -- "times one day and severe headache. Patient  
01:36 5 reports chronic headaches and recently seen in ER secondary to  
6 passing out, diagnosed with seizure disorder."

7 A. Okay.

8 Q. Do you remember that discussion?

01:36

9 A. Yes. I don't believe she was diagnosed with a seizure  
10 disorder, because she never had any testing, that I recall,  
11 where there were any definitive tests that proved that she had  
12 a seizure disorder.

13 Q. Were you present in the room when your daughter told  
14 Terri -- Dr. Scott that she had been diagnosed with a seizure  
01:37 15 disorder?

16 A. I recall talking about myself having been diagnosed as a  
17 possible seizure disorder and I took Topamax for that.

18 Q. But is Dr. Scott your doctor, as well?

19 A. I have seen her for myself, yes.

01:37

20 Q. But on this visit, this is from your daughter's records  
21 with Dr. Scott. You understand?

22 A. Correct.

23 Q. So, this record is about your daughter, not you.

24 A. Okay.

01:37

25 Q. Do you remember your daughter telling Dr. Scott that she

01:37 1 had been diagnosed with a seizure disorder?

2 A. I don't recall that, no.

3 Q. "Patient also wants STD screen secondary to recent  
4 boyfriend called her, said he had an STD."

01:38 5 Do you remember that?

6 A. I do.

7 Q. And is it your understanding that the man to whom she was  
8 referring in this note was Eric Iler?

9 A. I did not know it at the time.

01:38 10 Q. Who did you think it was?

11 A. I'm not sure. I took her to the -- I took her to the  
12 doctor. I took her to the doctor, again, several times  
13 throughout her life. And she would share some things with me  
14 that were personal and some things that she did not. And I  
01:38 15 respected that.

16 So, she didn't share things with me then that  
17 was -- I respected that. So, at the time, I didn't know.

18 Q. Did you ask your daughter who the boyfriend was that had  
19 the STD?

01:39 20 A. I didn't. I didn't ask her.

21 Q. Your daughter asked you to go with her to see the doctor on  
22 this date and be in the room while they discussed the fact that  
23 her new boyfriend had called her and said he had an STD?

24 A. I recall being there, and she would talk -- you know,  
01:39 25 she -- I took her to the doctor a lot; and I would sit in the

01:39 1 room and listen partial to some of the conversations and  
2 sometimes not.

3 Q. And you did not ask -- where was your daughter living at  
4 this point in time?

01:39 5 This is before her birthday. So, she would have  
6 been 19 years old, right?

7 A. Okay.

8 Q. Was she living with you?

9 A. I believe she was.

01:39 10 Q. When she was dating, would her boyfriends come to the  
11 house?

12 A. Some, sometimes.

13 Q. Did you meet her boyfriends?

14 A. Some.

01:40 15 Q. One would assume if a boyfriend called to say he had an  
16 STD, that's at least an indication that they were sexually  
17 intimate, wouldn't you say?

18 A. Could be, yes.

19 Q. But you don't know who the boyfriend was?

01:40 20 A. I don't -- I don't recall. I don't. I don't recall. I  
21 don't recall having a conversation.

22 Q. You knew that she was having lunches with Eric Iler?

23 A. Yes.

24 Q. You knew that she had gone on any overnight trip with him  
01:40 25 to a deer lease?

01:40

1 A. Correct.

2 Q. You knew that she had gone on an overnight trip with him to  
3 a class reunion?

4 A. Yes.

01:40

5 Q. But it didn't occur to you that it was Eric Iler who had  
6 called her to report that he had an STD?

7 A. Later it occurred to me, when she was in the hospital.

8 Q. But at this time you assumed it was another man?

9 A. I wasn't -- you know, I don't even think I -- I don't know.

01:41

10 I just -- I don't know.

11 Q. It just wasn't something that got your attention?

12 A. It did get my attention, but I just don't -- I just don't  
13 know. She -- I took her to the doctor. She had asked me to,  
14 and I accompanied her.

01:41

15 Q. And you didn't ask her who the boyfriend was?

16 A. If I did, I don't recall. I just don't recall.

17 Q. All right.

18 MS. CULLEN: Let's look at Bortz 6, please.

19 BY MS. CULLEN:

01:41

20 Q. This is an e-mail, Ms. Morgan. And, of course, e-mails,  
21 the first one is the last, the way they print out. So, we're  
22 going to go to the second page.

23 MS. CULLEN: And let's highlight the first in the  
24 string.

01:42

25 BY MS. CULLEN:

01:42 1 Q. This is from your daughter, "Jamie Jones, LOGCAP III" at  
2 Halliburton. You see that? So, she sent this from her office  
3 e-mail, right?

4 A. Okay.

01:42 5 Q. Does it seem that way to you?

6 A. It appears so.

7 Q. It does appear, doesn't it?

8 And it's to you, Cindy Jones. So, even though  
9 this is 2005, you're still using your old name?

01:42 10 A. Correct. At -- at the office, I was still using the old  
11 name.

12 Q. So, even though it doesn't -- on this part of the e-mail it  
13 doesn't show your address, you believe this must have been  
14 e-mailed to you at your office at Continental Airlines?

01:42 15 A. Yes.

16 Q. For it to show up as Cindy Jones, that just -- it would  
17 have to be that way, wouldn't it?

18 A. Yes.

01:42 19 Q. And the message says, "I had to than spend kind of a lot on  
20 the flower arrangement because the nearest florist is  
21 20 minutes away from the funeral home. I hope I will do okay  
22 on money. I felt as though I had to get him a nice  
23 arrangement, though."

24 Who was she talking about?

01:43 25 A. Eric Iler.



01:43 1 Q. And this is January 4th of 2005?

2 A. That's what it says, yes.

3 Q. About two months -- little more than two months after that  
4 visit to Dr. Scott where she's talking about the recent  
01:43 5 boyfriend who called about the STDs.

6 All right. And your response is, "How much did  
7 you spend?"

8 To which Jamie responds -- and it's just right at  
9 the very top of the page, "140."

01:43 10 And you replied, "Oh, my gosh. That is a lot,  
11 Jamie."

12 And then she responds to you, "I know. I am in a  
13 hard spot. I had to pitch in money towards the work flowers  
14 and buy my own flowers."

01:44 15 What was your understanding at this point in time  
16 of her relationship with Eric Iler?

17 A. I knew that -- that they had done some things together,  
18 had -- but I didn't know the extent of the relationship. I  
19 didn't know Eric Iler's age. I didn't know what I would later  
01:44 20 learn.

21 Q. You thought your daughter was just being particularly  
22 generous toward her boss -- you realized Eric Iler's father had  
23 died?

24 A. Yes.

01:44 25 Q. And that's the funeral that's being discussed here?

01:44 1 A. Correct.

2 MS. CULLEN: Let's go to Bortz 6, please, which is  
3 another e-mail string that's similar but not the same.

4 BY MS. CULLEN:

01:45 5 Q. And actually, the -- the second page of this one is the  
6 same. You're welcome to see it if you like, but it's the same,  
7 "140."

8 But then we have -- it helps if I'm actually  
9 looking at the right piece of paper. I apologize.

01:45 10 Starting again at the end and moving forward,  
11 we've got the same, "I had to spend a kind of a lot because the  
12 florist is 20 minutes away."

13 And you asked, "How much?"

14 And she says, "140."

01:45 15 MS. CULLEN: Do we have B5? Bortz 5? I'm sorry.

16 BY MS. CULLEN:

17 Q. Let's look at the first page, because this is where the  
18 string breaks off and we have different responses.

19 You respond, "I know your heart is in the right  
01:46 20 place, but that is a lot. I know you've been struggling  
21 lately."

22 Tell us what you meant by that, that her heart  
23 was in the right place.

24 A. She was trying to be compassionate about Eric Iler's  
01:46 25 father's death.

01:46

1 Q. And what did you mean that she had been struggling a lot  
2 lately?

3 A. Financially, I believe.

4 Q. She was personally having financial problems?

01:46

5 A. She was able to, you know, meet her obligations, et cetera.

6 Q. This was after she had purchased the Jaguar?

7 A. Oh, her Jaguar was the bottom-of-the-line Jaguar. It was  
8 comparable to, like, it could have been a Honda easily for the  
9 same price. It's just that a Jaguar sounds like a very

01:47

10 expensive vehicle, when you can buy other vehicles that don't  
11 sound -- like a Lexus or a Mercedes or a BMW, it sounds pricey.  
12 Although this -- I believe she paid in the mid twenties, I want  
13 to say, for this Jaguar, which is about what you would pay for  
14 a Honda Accord perhaps.

01:47

15 Q. At this time when she was struggling financially, it was  
16 after she had bought the new Jaguar?

17 A. She had bought the Jaguar.

18 Q. And it was after she had taken out a loan to have the  
19 breast augmentation?

01:47

20 A. I'm not sure the exact month that she had taken out the  
21 loan, but her monthly payment were very low.

22 Q. For the breast augmentation?

23 A. Yes.

24 Q. Do you know what other sorts of financial demands were  
25 being made on her income?

01:48

01:48 1 A. Not entirely, no.

2 Q. Was she helping to support you?

3 A. From time to time.

4 Q. How would she do that?

01:48 5 A. You know, she would buy groceries and things like that.

6 She was trying a little more -- you know, after I had gotten

7 sick and after I had my surgery, I had to take FMLA and I had

8 gone some time without pay, exhausted all my sick time.

9 Q. Are you speaking of your gastric bypass surgery?

01:48 10 A. Yes, ma'am.

11 Q. Of course, that wasn't until February, was it?

12 A. In February, yeah.

13 Q. And this was in January?

14 A. Yes.

01:48 15 Q. So, this was before that?

16 A. I'm not sure when exactly she purchased the car.

17 Q. And your last response on this is, "No worries, Miss,

18 everything will be okay. Have faith."

19 A. Okay.

01:49 20 Q. Let's take a look at Bortz 7, another e-mail string. This

21 one is January 5 of 2005, the very next day after the string

22 about the funeral flowers, right?

23 MS. CULLEN: Let's go to the last page, please. And

24 the top, it's already highlighted, blow that up for us.

01:49 25 BY MS. CULLEN:

01:49 1 Q. This is from Jamie at work to you at  
2 ContinentalAirline.com. That's where you were working at the  
3 time, right?

4 A. Correct.

01:50 5 Q. And it says, "Hey, I was assigned to check Eric's voice  
6 mail while he's out. And there was a message from his ex on  
7 there. It was like, 'Hey, Eric, I've been trying to call you.  
8 I don't know why you're not answering me. I didn't expect you  
9 to be at work, anyways.' And that's all she said. I know it  
01:50 10 was his ex because the answering machine states the caller's  
11 name for you and it said Jennifer Royal."

12 Do you remember getting that e-mail?

13 A. I remember -- I don't recall getting this -- this looks  
14 like an e-mail that I could have received, yes. I don't recall  
01:50 15 it, like, verbatim, no.

16 I do recall Jennifer Royal being one of Eric  
17 Iler's ex-girlfriends, who was young like Jamie and  
18 impressionable, also. And I feel like Eric Iler was  
19 manipulating both of these young women in order to keep their  
01:51 20 jobs by having a relationship with himself.

21 Q. Are you through?

22 A. Yes.

23 Q. And then you respond to Jamie, "That tells you something.  
24 He does not want to talk with her, Jamie. Take that as a good  
01:51 25 sign. He has included you to share in his grief. He has

01:51 1 chosen you."

2 In the context of just a couple of months before,  
3 being with her at a doctor's office where she tells the doctor  
4 her new boyfriend called her and has STDs, and in the context  
01:51 5 of being aware that she's having lunches with Eric Iler and has  
6 gone on at least two overnight trips with Eric Iler and has  
7 spent a lot of money on flowers for Eric Iler's father's  
8 funeral, can you explain to us what you were thinking when you  
9 wrote this, "Take it as a good sign. He has chosen you"?

01:52 10 A. I believe this is a fabricated e-mail. I don't believe  
11 that I wrote that one.

12 Q. You're saying that you believe this e-mail is some sort of  
13 document forgery?

14 A. Possibly, yes.

01:52 15 Q. Am I understanding you?

16 A. Yes.

17 Q. You notice it says, "Jones, Cindy," and then in the  
18 brackets, "Mail to CindyJones@coair.com."

19 Now, that's the e-mail for Continental Airlines,  
01:52 20 right?

21 A. Yes, it is.

22 Q. "To Jamie Jones at LOGCAP III," that was her work e-mail  
23 address, too?

24 A. Yes, it was.

01:53 25 Q. And your belief is that someone forged this document?

01:53

1 A. I believe it's very possible.

2 Q. Well, let's take a look at the rest of it.

3 A. Okay.

4 Q. Jamie then responds to you, "Are you sure, Mom?"

01:53

5 Do you think somebody was forging Jamie's  
6 responses, too, or just your answers?

7 A. Very possibly.

8 Q. Both ways?

9 A. Very possibly.

01:53

10 Q. Okay. Let's look at your response, which is --

11 MS. CULLEN: It starts on the bottom of the next  
12 page -- of the first page. There we go.13 Can we get both pages up at the same time or --  
14 all right. So, we're going to start at the bottom on -- there  
15 we go. And move to the top.

01:53

16 BY MS. CULLEN:

17 Q. "Yes, I am sure. He has included you and chosen you to  
18 share in his grief. You are where he must feel peace and safe.  
19 Maybe she thinks she has a shot now that she thinks he's at a  
20 sad time in his life, not knowing he has this part of his life  
21 fulfilled. No worries. You are there. She isn't. Smile to  
22 yourself. You are the one."

01:54

23 Would you agree with me that that e-mail would be  
24 inconsistent with the response of a mother who believed her  
25 daughter was involved with a man who had given her or was about

01:54

01:54 1 to give her STDs?

2 A. What I believe in this e-mail is that these are not words  
3 that I normally choose to write or to speak verbally. This  
4 does not look like anything that I would ever write. This is  
01:54 5 not how I communicate, verbally or in writing. These are not  
6 words that I choose.

7 So -- I had a hard time in the deposition as well  
8 looking at this, because it's something that doesn't look like  
9 I would ever write.

01:55 10 Q. And you have --

11 A. I don't believe I ever wrote them.

12 Q. And you have concluded that it is fabricated?

13 A. I have, yes.

14 Q. Have you discussed that with your daughter?

01:55 15 A. Have I discussed this?

16 Q. Yes.

17 A. No.

18 Q. She's been deposed. You've been deposed. You watched her  
19 deposition. She read your deposition. You have never talked  
01:55 20 about the fact that it's -- a rather extraordinary thing  
21 occurred and there was a document that was fabricated?

22 A. I saw Jamie's deposition, and that's all I saw.

23 Q. Let's look at Jamie's response.

24 MS. CULLEN: Let's go to the first page, just above  
01:56 25 the middle of the page, "Should I mention that she called?"



01:56 1 BY MS. CULLEN:

2 Q. So, at least on this paper, Jamie's response to you was,  
3 "Should I mention that she called?"

4 And then your response was, "Yes, you should  
01:56 5 relay all messages."

6 You thought you might have written that one,  
7 right?

8 A. I could have written that one.

9 Q. So, just to be clear, is it your theory -- actually, I  
01:56 10 don't think it is clear.

11 What is your -- which parts of this e-mail do you  
12 think are real, and which ones do you think are not?

13 A. The --

14 Q. Just the very last one?

01:56 15 A. The previous two, yes.

16 Q. So, the only two that you think are reliable are "Should I  
17 mention that she called" and "Yes, you should relay all  
18 messages"?

19 A. That's possible that we wrote -- that we corresponded with  
01:57 20 that e-mail, yes.

21 Q. Of course, it doesn't make much sense since you would have  
22 no idea who she's asking about when she says "Should I mention  
23 that she called"?

24 A. Well, it mentions before that, Jennifer Royal.

01:57 25 Q. So, you think that part's real, too?

01:57 1 A. It's possible, because Jennifer Royal is -- was another  
2 person that I feel Eric Iler had manipulated into having a  
3 relationship, who was a young age, as well.

4 Q. So, at this point, shortly -- shortly after that point --  
01:57 5 this was in January, January 5th. And then, not long after  
6 that, January -- I think it's 24th -- yes, January 26th, your  
7 daughter is hospitalized for a particularly vicious outbreak of  
8 herpes, right?

9 And it's your testimony that it was at that time  
01:58 10 that you learned for the first time that your daughter had a  
11 sexual relationship with Eric Iler. Is that correct?

12 A. Yes.

13 Q. How did you feel about KBR and Halliburton at that point?

14 A. I wasn't very happy with KBR and Halliburton at that point.

01:58 15 Q. You felt they were responsible to some degree for what had  
16 happened to your daughter?

17 A. I feel like a direct employee under a manager, the manager  
18 should know not to pursue any kind of sexual relationship with  
19 his direct report under him.

01:59 20 Q. Were you aware that your daughter did not end the  
21 relationship with Eric Iler until three months later, in March?

22 A. No.

23 Q. Did you talk to her about it? After the hospitalization  
24 when you learned what was going on, did you talk to your  
01:59 25 daughter about the situation with Eric Iler?

01:59

1 A. I talked to her while we were -- while she was in the  
2 hospital a great deal when I was pretty mortified about what  
3 happened. And we reported it right away to Frederick Heard.

4 Q. And did you encourage her to break it off?

01:59

5 A. Of course.

6 Q. Did you get firm with her and tell her, "This is just not  
7 acceptable. You have to break this off"?

8 A. Yes. I felt like he was manipulating her into having a  
9 relationship with him to keep her job, to keep her employment  
10 with KBR/Halliburton.

01:59

11 Q. Did she tell you why it was important to her to keep her  
12 job, that important?

13 A. Could you repeat the question?

14 Q. Did your daughter share with you why she felt it was so  
15 important to keep her job that she would put up with daily  
16 sexual assault in the office?

02:00

17 A. She was trying to help me.

18 Q. What was she trying to help you with?

19 A. She was trying to protect me.

02:00

20 Q. In what way?

21 A. She knew this would be -- I would be devastated if I were  
22 to learn what he was doing to her. She felt like I would be  
23 devastated. And it's true, I was, when she finally confided in  
24 me and told me what was going on. We reported it -- I reported  
25 it right away.

02:00

02:00 1 Q. I'm sorry. My question wasn't clear.

2 Why -- did your daughter confide in you why she  
3 needed that job so badly she would allow this man to assault  
4 her on a daily basis at the office to keep her job?

02:01 5 A. I don't -- I don't recall.

6 Q. And that was in January?

7 A. Uh-huh.

8 Q. You were not going to have your gastric bypass surgery  
9 until February?

02:01 10 A. Yes.

11 Q. So, you have no idea why, in January and before, your  
12 daughter felt it was so important to keep her job she would let  
13 a man assault her daily?

14 A. She was very young and very impressionable. She was  
02:01 15 19 years old. She was a child.

16 Q. Actually in December of 2004, she was 20, wasn't she?

17 A. I would have to sit down and figure out her age.

18 Q. If she was born in 1984, then in December of 2004 when she  
19 had her birthday she was 20?

02:02 20 A. She was younger when she started working for Halliburton,  
21 KBR.

22 MS. CULLEN: Let's look at Bortz 10, please.

23 BY MS. CULLEN:

24 Q. In July of 2005, seven months after you learned that Eric  
02:02 25 Iler had been systematically assaulting your daughter on a

02:02 1 daily basis and you say you called someone at Halliburton and  
2 reported it and she didn't break it off with Mr. Iler until  
3 March, in July we have Jamie sending this e-mail to Mr. Justin  
4 Lee at Halliburton that says, "Hey, Justin. Here is my family  
02:03 5 member's résumé I promised you. Please let me know what she's  
6 qualified for. I notice that she is HazMat certified with  
7 Continental Airlines. That may help her. She can leave in the  
8 near future. Thanks for all your help. Thanks, Jamie.

9 "P.S. Can you send the letter of intent whenever  
02:03 10 you get a chance?"

11 And notice, please, that the attachment is  
12 "Breanna Morgan.doc."

13 A. Okay.

14 Q. You understand that that attachment is your résumé?

02:03 15 MS. CULLEN: Can we bring up Bortz 11, the attachment?

16 BY MS. CULLEN:

17 Q. In July of 2005, you, with your daughter's assistance, were  
18 trying to get hired by a company that you detested and thought  
19 had done nothing when your daughter was being abused on a daily  
02:04 20 basis at the office. Is that right?

21 A. Yes. I didn't want her to go overseas by herself.

22 Q. Let's look at Joint Exhibit 147. This is a fairly lengthy  
23 e-mail back and forth between you and your daughter about  
24 things she wanted you to send her, she was in Iraq, had  
02:05 25 arrived.

02:05 1 But the one that I want to draw your attention to  
2 is at the top of the second page of the exhibit. This one is  
3 from you to Jamie. On July 26th of 2005, which would have been  
4 her second or third -- third day in Iraq, right?

02:05 5 A. (No response.)

6 Q. "How far is your office from where you live? Do you have  
7 to drive it, and how are you liking your job?" That's from you  
8 to Jamie.

9 And then you ask -- you tell her, "I sent Justin  
02:05 10 Lee" -- Justin Lee, that's who your résumé was sent to, right?

11 A. Yes.

12 Q. "I sent Justin Lee an e-mail, just a short note asking  
13 about the status of my résumé. I would still come over if I  
14 get the opportunity." Is that right?

02:06 15 A. Yes.

16 Q. So, you were following up with Mr. Lee in hope of being  
17 hired by Halliburton?

18 A. Yes, eventually.

19 Q. I want to talk with you about events after your daughter  
02:06 20 returned from Iraq. All right?

21 MS. CULLEN: Would you put up Bortz 35, please? And  
22 let's go to the top of the page.

23 I'm sorry. Let's start with the first message,  
24 which would be the bottom of the second page -- third page.

02:07 25 BY MS. CULLEN:

02:07 1 Q. At the top we see a message from Gabe Andino to Ron  
2 Boutwell on August 13, 2005 -- do you see that -- in which he  
3 says, "Ron, no issues. She called me back and I talked with  
4 mom and daughter, explained to mom and Jamie that it was  
02:07 5 premature to discuss her return."

6 Do you remember Jamie sending an e-mail saying  
7 she wanted to go back to work in Iraq in August?

8 A. I don't recall that, no.

9 Q. You weren't aware of that?

02:08 10 A. I don't recall anything like that.

11 Q. Do you remember talking to Gabe Andino about the fact that  
12 Jamie had sent e-mail soliciting a position overseas?

13 A. I don't recall that, no.

14 Q. Don't remember it at all?

02:08 15 A. No.

16 Q. Don't remember any discussion with Mr. Andino in which he  
17 explained to you that he was concerned that, given the nature  
18 of what she had described happened to her, he thought it was  
19 just too early for her to try to come back to work?

02:08 20 A. I don't recall that, no.

21 Q. After Jamie came home, she began to see various therapists  
22 over time, correct?

23 A. I don't believe "various" therapists.

24 Q. She saw Dawn Nelson?

02:09 25 A. Correct.

02:09 1 Q. Dawn Nelson was one of the therapists that she saw?

2 A. Yes, she was.

3 Q. Okay. There are a few notes from Dawn Nelson's records  
4 that raise questions.

02:09 5 A. Okay.

6 Q. So, let's address some of those.

7 In April of 2006, which would have been -- let's  
8 see. Your daughter returned home the first of August in  
9 2005 -- so -- eight months? About eight months after she had  
10 come home, she's seeing Dawn Nelson?

02:09 11 MS. CULLEN: Let's look at Bortz 204.

12 And if you would highlight for me the second  
13 asterisk portion in the top. There we are.

14 BY MS. CULLEN:

02:10 15 Q. "Client is concerned, mother has threatened to sabotage."

16 A. Okay.

17 Q. What was it that Jamie thought you had threatened to  
18 sabotage?

19 A. I don't -- I don't recall right off.

02:10 20 Q. Are there several possibilities that you could describe to  
21 us?

22 A. I don't -- I don't recall at the moment what this was  
23 pertaining to. I'm sorry.

24 Q. Was Jamie living with you at this time?

02:10 25 A. At that time -- I'm not sure of the date. I'm not sure if



02:10 1 she was or not.

2 Q. She might have already moved in with Kallan at that point?

3 A. That was four -- 4-12 of '06.

4 Q. Well, they were engaged in February of 2006, were they not?

02:11 5 A. Could have been, yeah.

6 Q. So, she was probably living with Kallan at that point?

7 A. Yeah. Yes. That may have been when she came to get some  
8 of her things and I was upset with Kallan, I believe, and asked  
9 her to come back and get her things at another time. And maybe

02:11 10 she took it as I wasn't going to give her her things or -- I'm  
11 not sure. I don't recall exactly what --

12 Q. I remember your testimony sort of like that, but that's  
13 about a different note.

14 A. I wasn't sure.

02:11 15 Q. Yeah. Let's look --

16 MS. CULLEN: Where it says "Intervention" and there's  
17 a line through it, let's get that first sentence.

18 BY MS. CULLEN:

19 Q. "Mother's drinking and medication use are problematic."

02:11 20 A. Okay.

21 Q. Do you remember when you were having those sorts of  
22 problems?

23 A. I wasn't having any problems other than sleeping. When,  
24 you know, Jamie had gotten back from Baghdad, I had a hard time  
02:12 25 sleeping, with everything that was going on. And I went to my

02:12 1 doctor and was prescribed Ambien. And, so, I took Ambien.

2 And I had apparently -- maybe over a couple of  
3 months time, I drank maybe -- I took a couple of drinks or  
4 glasses of wine. And as a gastric bypass patient, you can't  
02:12 5 drink very much without feeling the effect. It goes straight  
6 into your blood stream. So, I can't drink very much at a time  
7 at all.

8 But I've never had a drinking problem or  
9 medication being problematic. Jamie, I'm assuming, because I  
02:12 10 was getting up in the middle of the night -- a lot of people on  
11 Ambien will wake up in the middle of the night, do things they  
12 don't remember, like maybe cook something.

13 My habitual thing would be to cook oatmeal, not  
14 remember doing it. I would wake up in the morning, the kitchen  
02:13 15 would be a mess, I still had oatmeal on myself, on my person.  
16 And that was a problem -- obviously, that was a problem for her  
17 and a problem for me. And I was on Ambien for -- I don't  
18 know -- two or three months or so.

19 Q. And, so, it's your belief that she talked to her therapist  
02:13 20 about being concerned about your drug use being problematic  
21 because you were sleep eating while taking prescription Ambien?

22 A. Yes. Yes. She -- that was a problem. The problem being I  
23 didn't remember it. You don't recall it -- I mean, this is a  
24 common problem with people on Ambien, that they do not  
02:14 25 remember. They get up in the night, and they don't remember

02:14 1 what they've done.

2 Q. I don't want to interrupt you. Are you done?

3 A. Yes.

4 Q. The drinking problem, did I understand your answer

02:14 5 correctly in that you were drinking small amounts but you were  
6 getting drunk because of your gastric bypass?

7 A. I don't believe I was getting drunk, no. I drank maybe  
8 just a -- there was only one bottle of wine. So, I didn't  
9 drink -- I mean, I'm not an alcoholic, never been classified as  
02:14 10 one, never went to AA. During that time, I had drank just a  
11 little bit of wine. A little bit of wine goes a long way. So,  
12 I would have maybe a little bit of wine and maybe the Ambien;  
13 but I wouldn't remember drinking the wine. That was the  
14 problem.

02:14 15 So, was that problematic? Yes. Did I need to  
16 cease doing that? Yes. I wasn't aware of it until my daughter  
17 brought it to my attention that it was a problem, "Mom, do you  
18 realize you're getting up in the middle of the night and taking  
19 the Ambien -- even after you've already taken Ambien, you take  
02:15 20 another Ambien because you don't remember?"

21 I wasn't remembering that I was doing these  
22 things. So, it was a big -- it was a problem, and I had to do  
23 something about it.

24 Q. So, what did you do about it?

02:15 25 A. Stopped taking them.

02:15 1 Q. Immediately?

2 A. I'm not sure exactly when I stopped taking it, but I -- she  
3 may have talked to her therapist before she talked to me about  
4 it. I'm not sure, because I didn't have any privy to any of  
02:15 5 her medical records with Dawn Nelson.

6 Q. She didn't tell you that she was concerned about your  
7 drinking and drug problem and try to work something out with  
8 you?

9 A. Let me rephrase that. It was not a drinking and drug  
02:15 10 problem. It was a prescription drug that I was taking from a  
11 doctor, and I wasn't abusing the medication other than when I  
12 would get up and I would take it and I wouldn't recall taking  
13 it again.

14 It was a very short window of time. So, during  
02:16 15 that window of time that I took the medication, whatever it  
16 was, it wasn't very long. And when I realized it was a  
17 problem -- because, at first, I couldn't recall it. So, you  
18 don't recall -- I didn't recall waking up in the middle of the  
19 night, but it was very believable that this was happening  
02:16 20 because I would wake up with the things that she would say,  
21 "Mom, you got up, you made some oatmeal." I would still have  
22 it all over my face or my shirt. I would still have it on my  
23 person, and the kitchen would have oatmeal. That was my -- I  
24 wake up and make oatmeal. It was kind of bizarre.

02:16 25 Q. Your daughter referred to it as your "drinking and

02:16 1 medication problem," right?

2 A. Yes, uh-huh.

3 MS. CULLEN: Let's look at Bortz 205. About halfway  
4 through the narrative -- I don't know how to even point you in  
02:17 5 the right place.

6 Starting right here. There we go.

7 BY MS. CULLEN:

8 Q. Once again, your daughter was seeing Dawn Nelson on  
9 April 20th?

02:17 10 A. Okay.

11 Q. A little -- what? Eight days after the last visit?

12 A. Okay.

13 Q. And they discussed -- Dawn Nelson records that they  
14 discussed how she could "care for self living with mother's  
02:17 15 ETOH" -- you understand that to be an abbreviation for alcohol?

16 A. Okay. I didn't know that, but okay.

17 Q. That's the chemical formula for alcohol, ETOH.

18 A. Okay.

19 Q. -- "/drug abuse," she says this time. So, a week later,  
02:18 20 it's still of sufficient magnitude as a problem, at least in  
21 your daughter's mind, to be discussing with her therapist how  
22 to live with what she's calling your alcohol and drug abuse,  
23 correct?

24 A. From Jamie's point of view, I can understand -- if you are  
02:18 25 20 years old and you see your mom waking up in the middle of

02:18 1 the night, I can understand why she was referring to me as  
2 alcohol and drug abuse.

3 I understand Jamie's mind, and why she was  
4 categorizing it as that. I understand it. I'm not an  
02:18 5 alcoholic, and I'm not a drug abuser whatsoever. Anybody in my  
6 life would never tell you that I am, I don't care who you pull  
7 into the picture.

8 But in Jamie's mind, I could see how Jamie would  
9 feel that that was the case. At 20 years old -- if I were  
02:19 10 20 years old and that's what I saw my mother doing, I would  
11 classify that as the same thing, at 20 years old; I wouldn't  
12 say prescription drug, prescription medication, which is what  
13 Ambien is.

14 Q. Of course, at this point she was 21?

02:19 15 A. Okay. 20, 21.

16 Q. But that's not a huge difference in age. And she had  
17 herself been taking Ambien for some years, right?

18 A. I don't know how long she took Ambien. I couldn't say it  
19 was years.

02:19 20 Q. And she had at least some experience with drinking alcohol.  
21 But you think that she was so young, naive, and inexperienced  
22 that just your sip or two of wine and Ambien side effects would  
23 be enough for her to discuss mother's alcohol and drug abuse  
24 with her therapist two weeks in a row?

02:20 25 A. Sure. When you have a gastric bypass and you drink a

0 2 : 2 0 1 little bit, I can -- I can have a sip of wine and feel the  
2 effects very shortly afterwards. It's different than if you  
3 didn't have one. It goes directly into your blood stream. It  
4 goes right to your intestines, into your blood stream pretty  
0 2 : 2 0 5 quickly, pretty rapidly.

6 Q. How many times did Jamie discuss this issue and her  
7 concern, her deep concern about this issue, with you before you  
8 stopped taking Ambien and/or drinking alcohol?

9 A. I only had the one bottle of wine in the house at the time.  
0 2 : 2 0 10 Fairly quickly. Like I said, I was only on it maybe just a few  
11 months at all, period, a duration of couple months.

12 Q. Well, let's look at the next note of Dawn Nelson.

13 A. Okay.

14 MS. CULLEN: Which is Bortz 206. And if you could  
0 2 : 2 1 15 enlarge the first couple of sentences after "Narrative."

16 Very good. Thank you.

17 BY MS. CULLEN:

18 Q. "Client is frustrated, sad, and disillusioned, mother's  
19 behavior has exacerbated, needs to move out."

0 2 : 2 1 20 Did you realize her therapist was talking to her  
21 about moving out because of your behavior?

22 A. I didn't know she was having this conversation with her  
23 therapist.

24 Q. Do you have any recollection of late spring of 2006 and  
0 2 : 2 1 25 what it is that might have been so bad that her therapist would

02:22 1 be advising her to move out?

2 A. No. No, I don't.

3 MS. CULLEN: Let's look at Bortz 207, which is a week  
4 later. Let's highlight the first handwritten paragraph -- yes,  
02:22 5 ma'am, "Plan," that's it.

6 BY MS. CULLEN:

7 Q. Plan on May 3rd, 2006 is "client will speak to mother and  
8 take appropriate legal action if necessary."

9 Let's look down in the narrative for some  
02:22 10 information about what kind of legal action might be necessary.

11 MS. CULLEN: We need another line or two. There we  
12 go.

13 BY MS. CULLEN:

14 Q. "Client is feeling physically ill, reports mother has  
02:23 15 illegally withdrawn money again from client's bank account.  
16 Mother will not give her access to her belongings."

17 Do you recall what this is about?

18 A. Okay. That was when I was speaking earlier with  
19 Mr. Estefan about when we moved into the two-bedroom apartment  
02:23 20 and Jamie had written me 12 checks, postdated checks, for me to  
21 cash one per month. And I had cashed two of those, and I  
22 believe that's what she is talking about here.

23 And the belongings would have been whenever she  
24 was -- she was moving out and I had a disagreement with her --  
02:24 25 with Kallan and asked them to pick up her belongings at a later



0 2 : 2 4 1 day. And it must have been what she's referring to.

2 Q. So, we've seen this string of visits at which your daughter  
3 is discussing with her therapist problems with -- her perceived  
4 problems, anyway, with you, with your behavior, alcohol and  
0 2 : 2 4 5 drugs, the therapist discussing with her the need to move away.

6 Now we see she has moved away. Is that correct?  
7 That's the progression of these notes --

8 A. Okay.

9 Q. -- and of the events in your household?

0 2 : 2 4 10 A. Uh-huh.

11 Q. What were you fighting with Kallan about, arguing?

12 A. I don't even recall now. I don't recall. It was a long  
13 time ago.

14 Q. There's -- depending on how many days there are in April --  
0 2 : 2 4 15 and I'm not recalling right now whether it's 30 or 31.

16 THE COURT: Thirty.

17 MS. CULLEN: Thirty?

18 THE COURT: Glad to be able to contribute.

19 MS. CULLEN: Thank you, your Honor.

0 2 : 2 5 20 BY MS. CULLEN:

21 Q. So, this is the eighth day following the last note that we  
22 saw. So, between the therapist telling her "needs to move out"  
23 and her having apparently moved out and come back to pick up  
24 some of her belongings -- and she did it within the week, did  
0 2 : 2 5 25 she not?

02:25 1 A. From the notes, it appears.

2 Q. Did you know why she was moving out?

3 A. She was moving out to live with Kallan. And they got  
4 married -- let's see -- September 1 of 2006.

02:25 5 Q. In light of the notes that we've just gone through with  
6 Dawn Nelson, don't you think it's reasonable to believe that  
7 she was moving out because of your behavior and the problems  
8 with alcohol and drugs?

9 A. Well, the alcohol that you're referring to and the drugs  
02:26 10 that you're referring to was not a -- was not a problem,  
11 although it appeared to be a problem for that short window of  
12 time. I didn't have a drug problem or an alcohol problem as  
13 have been referred to.

14 Because I was taking Ambien. A lot of people  
02:26 15 take Ambien. I wouldn't say that they have a drug problem if  
16 it's a prescription medication. I reacted differently,  
17 adversely to Ambien. And a lot of people do. A lot of people  
18 act adversely to Ambien.

19 I've seen it on talk shows. I've seen it on TV.  
02:26 20 I've heard people talk about it. A lot of people can't take it  
21 because they get up in the middle of the night and they won't  
22 remember. They cook, they eat, they do a lot of things that  
23 they don't remember.

24 But she could have very well moved out -- that  
02:26 25 could have been one of the reasons, according to these notes.

02:26 1 Q. She did talk to you about these issues before just moving  
2 out, didn't she?

3 A. We had talked about the Ambien. I was having a very hard  
4 time with all of the events from when she went to Baghdad and  
02:27 5 what happened to her. And from a mother's point of view, I was  
6 having a very, very difficult time.

7 Q. Let's skip forward about a year.

8 A. Okay.

9 MS. CULLEN: Would you bring up Bortz 235?

02:27 10 BY MS. CULLEN:

11 Q. This is a note from therapist Nicole Dockter. Did you know  
12 Nicole Dockter?

13 A. I had met her once or twice.

14 MS. CULLEN: In the middle of the page we have a line  
02:27 15 that goes across. Let's enlarge the sentence just under it.

16 BY MS. CULLEN:

17 Q. "Mom has no boundaries."

18 Do you recall there being problems in the summer  
19 of 2007 between you and Jamie?

02:28 20 A. I don't -- I don't recall, no.

21 Q. You don't have any idea what that might be about?

22 A. Well, Jamie was living in San Diego with her husband; and I  
23 was living in Houston. So, I'm not quite sure what she's  
24 referring to.

02:28 25 Q. Did you go out and visit her while she was in San Diego?

02:28

1 A. I did.

2 Q. Were there problems when you visited?

3 A. None that I recall.

4 MS. CULLEN: Thank you.

02:28

5 I pass the witness, your Honor.

6 THE COURT: Any questions from KBR?

7 MS. VORPAHL: I'll try to be brief, your Honor.

8 **CROSS-EXAMINATION**

9 BY MS. VORPAHL:

02:29

10 Q. How are you, Ms. Morgan?

11 A. I'm fine. Thank you.

12 Q. You and I met at your deposition. Is that right?

13 A. Correct, we did.

14 Q. All right. I think you've said that you and your husband,

02:29

15 Tom Jones, got a divorce because your husband had an affair.

16 Is that right?

17 A. Yes.

18 Q. Does it surprise you to know that your husband says that

19 you and your husband got a divorce because you had an affair?

02:29

20 A. It doesn't.

21 Q. That doesn't surprise you?

22 A. No.

23 Q. You'll agree with me that your -- that your -- when I tell

24 you that your husband testified that your daughter, Jamie,

02:29

25 encouraged him to get a divorce from you?

0 2 : 2 9 1 A. If my daughter had said that, that would be something that  
2 he -- I mean, I'm not sure.

3 Q. Well, would it come as a surprise to you to know that your  
4 husband testified that way, your ex-husband?

0 2 : 3 0 5 A. Sure, yes.

6 Q. That would surprise you?

7 A. Uh-huh, yes.

8 Q. Well, let's take a look, then, at his testimony.

9 A. Okay.

0 2 : 3 0 10 Q. I asked your husband, "How did Jamie Jones handle the  
11 matter of your divorce?"

12 And the answer was, "Jamie encouraged me to file  
13 for divorce."

14 Then I asked, "Jamie encouraged you to file for  
0 2 : 3 0 15 divorce?"

16 And he said, "yes."

17 And I said, "Okay. Tell me what circumstances  
18 caused Jamie to encourage you to file for divorce."

19 And the answer was, "Her mother was having an  
0 2 : 3 0 20 affair."

21 And the question then was, "And Jamie was aware  
22 of that?"

23 "Yes."

24 Maybe I'm reading the wrong part. Bear with me.

0 2 : 3 0 25 "Jamie encouraged you to file for divorce?"

02:31

1

And the answer, again, was, "Yes.

2

"And tell me what circumstances caused Jamie to encourage you to file for divorce.

4

"ANSWER: Her mother was having an affair.

02:31

5

"QUESTION: And Jamie was aware of that?

6

"ANSWER: Yes."

7

Are you surprised at that testimony by your former husband?

9

A. No.

02:31

10

Q. You're not surprised at that?

11

A. You know, I was seeing someone after we were legally separated. So, I'm not surprised that he's calling it affair. You could call it an affair. We were not legally divorced at that time. We were legally separated at that time.

02:31

15

Q. Yes, ma'am. I've looked at your divorce file. Where was this legal separation indicated?

17

A. It was a legal separation. That's what his attorney -- we had the same attorney -- classified it as, it was a legal separation. We had to be separated for six months prior to being granted a divorce.

02:32

20

21

So, we had to be -- we already decided we were going to get a divorce. We couldn't get a divorce. The soonest that we could -- we had to go through some counseling with Jamie. We had to take her to -- we had to go to some sort of class, as well. We had -- it was that we had to go to a

02:32

25

1 class, I believe, that he and I had to go to a class. And we  
2 had to work on a few things before we were granted the divorce.

3 Q. Are you aware that your husband testified that you remained  
4 in the home until shortly before the divorce in October of  
5 2000?

6 A. No, that's not correct. I was living in Jefferson Pines  
7 Apartments.

8 Q. All right. Well, we'll let your husband address that when  
9 he comes to testify.

10 A. Okay.

11 Q. Jamie knew that you also had had an affair during the  
12 marriage, too. Is that right?

13 A. You can call it affair if -- I mean, it depends. I was  
14 already out of the house. So, we've already decided we're  
15 getting a divorce. My husband at the time had already filed  
16 for the divorce. So, yes, I had an affair. No, I didn't -- it  
17 just depends on how you classify it.

18 Q. And my question was, was Jamie aware of that.

19 A. Yes.

20 Q. And did she encourage you to get the divorce, too?

21 A. No.

22 Q. Now, the person that you had an affair with during your  
23 marriage or during this legal separation that you've described  
24 was James Hayder. Is that right?

25 A. That's right.

02:33 1 Q. All right. He was a coworker of yours at Continental  
2 Airlines?

3 A. He was.

4 Q. And you lived with him?

02:33 5 A. He lived with me.

6 Q. All right. And he's the one that was verbally and  
7 physically abusive to you?

8 A. Yes.

9 Q. And he's the one that caused your daughter, Jamie Jones, to  
02:33 10 report herself to CPS?

11 A. Correct.

12 Q. Jamie went to three different high schools. Isn't that  
13 right?

14 A. I believe so.

02:34 15 Q. And in one case the move was to remove her herself from a  
16 difficult situation. Isn't that correct?

17 A. I'm not familiar with the difficult situation.

18 Q. Okay.

19 MS. VORPAHL: If we could put up Bortz Exhibit 153,  
02:34 20 Page 2.

21 BY MS. VORPAHL:

22 Q. Take a look towards the top of the page, the very first  
23 partial paragraph.

24 MS. VORPAHL: Actually, you're going to have to go --  
02:34 25 well, that's fine. Highlight the entire paragraph there.



02:34 1 There's a portion that has been redacted. What I meant was the  
2 entire paragraph -- if you can go back.

3 All right. This is all a single paragraph right  
4 here. There's a redaction, which is why it appears that  
02:34 5 there's a blank.

6 BY MS. VORPAHL:

7 Q. Do you recognize this medical report?

8 A. Yes.

9 Q. All right. This is when Jamie was hospitalized in August  
02:35 10 of 2002. Isn't that right?

11 A. I believe so.

12 Q. Okay.

13 MS. VORPAHL: Go to the first page so that we're  
14 all -- we all make sure that we understand what record this is.

02:35 15 A. Okay. 8-14 of '02, is that what it says?

16 BY MS. VORPAHL:

17 Q. Yes. It says, "8-14-02, date of admission; 8-19-02, date  
18 of discharge."

19 And the title of this report is Discharge  
02:35 20 Summary. You've seen this before. Isn't that right?

21 A. Yes, ma'am.

22 MS. VORPAHL: All right. Actually, while we're on the  
23 first page, go down to the first full paragraph.

24 BY MS. VORPAHL:

02:35 25 Q. It indicates there, about two-thirds of the way down,

0 2 : 3 5 1 "T max during this hospital stay has been 100."

2 That's a reference to Jamie Jones' temperature  
3 during the hospital stay. Isn't that right?

4 A. Jamie's temperature when -- when I brought her in was 102.

0 2 : 3 6 5 Q. All right. But the doctor is saying that the maximum  
6 temperature was a hundred during the hospital visit, correct?

7 A. Well, there's another part of this record that states  
8 "102." Do you have that part of the record?

9 Q. Ma'am, I'm not aware of that part of the record. I'm aware  
0 2 : 3 6 10 of this discharge summary that says, "T max during this  
11 hospital stay has been a hundred."

12 Is that what this says?

13 A. That's what it says, but there's another part of this  
14 record that's not here.

0 2 : 3 6 15 Q. Okay.

16 A. Okay.

17 MS. VORPAHL: Go down to the next paragraph.

18 BY MS. VORPAHL:

19 Q. There's an indication, isn't there, that there is a  
0 2 : 3 6 20 possible psychosomatic manifestation of your daughter's  
21 multiple psychosocial stressors. Is that correct?

22 A. That's what it says, yes.

23 Q. What was your understanding of the psychosomatic  
24 manifestation of her multiple psychosocial stressors in August  
0 2 : 3 6 25 of 2002?

02:36 1 A. Okay. In August of 2002, during that timeline, her father  
2 wanted full custody of her, of Jamie, and had spoken with the  
3 doctor about -- this is what I believe happened, that he had --  
4 he had been taking Jamie to a therapist.

02:37 5 And based on conversations that he had with the  
6 therapist -- these were not diagnoses for me, this was him and  
7 his therapist talking. He wanted custody of her. And so --  
8 and he wanted her to be away from me and my abusive ex -- well,  
9 now it's boyfriend -- then boyfriend. He wanted her to be away  
02:37 10 from that situation and that environment.

11 And, so, what he had done during that time was  
12 plant the seed of suggestion that Jamie had some psychological  
13 stressors, et cetera, et cetera, and that I had Munchausen. I  
14 don't know how they came up with that because there's nothing  
02:38 15 in my medical history indicative -- even suggestive of that  
16 whatsoever.

17 Q. Okay. Well, this report doesn't say that the father  
18 reports psychosomatic manifestation of your daughter's multiple  
19 psychosocial stressors, does it?

02:38 20 A. No.

21 Q. Okay. It indicates that the doctor who is writing this  
22 report considered that?

23 A. Yes. And this was suggested by her father.

24 Q. And how do you know that her father suggested

02:38 25 "psychosomatic manifestation of her multiple psychosocial

02:38 1 stressors"?

2 A. These were conversations that he apparently had with this  
3 therapist, Dr. Robbie Burnett. He was trying to gain full  
4 custody of Jamie.

02:38 5 Q. So, you're saying this was your husband's idea, not the  
6 doctor's idea?

7 A. I believe that they were talking.

8 Q. That Susan Lackson, MD, and your husband got together and  
9 agreed that they were going to say that there was the  
02:39 10 possibility of psychosomatic manifestation of your daughter's  
11 multiple psychosocial stressors?

12 A. I wasn't there, so I can't speak for either one of them. I  
13 just know the situation that he and I was in at the time, which  
14 we got in a disagreement in the hospital and I left and I  
02:39 15 didn't return. So, I can't speak for what the two of them -- I  
16 know that he called her, her therapist, and he had taken her to  
17 this particular therapist and -- I don't know much about what  
18 those visits were like.

19 Q. Respectfully, though, ma'am, you were at the hospital  
02:39 20 between August 14th and August 19th, right?

21 A. I had gone in, yes. And I had an altercation with -- or a  
22 disagreement with my ex-husband and didn't go back in.

23 Q. And what was that disagreement over?

24 A. I don't recall. I just recall that we had a disagreement  
02:40 25 and then I left. And he stayed with her primarily during the

02:40 1 whole time, the whole visit.

2 I took her in for a 102 fever. So, when I read  
3 this record for the very first time, I was pretty shocked about  
4 it.

02:40 5 Q. Because that's not what it says, is it?

6 A. I believe that -- that Jamie had -- I believe this was the  
7 visit when she had West Nile, or they told me that they thought  
8 she had West Nile. Isn't this one and the same?

9 Q. You think this is a diagnosis of West Nile virus?

02:40 10 A. That's what -- when we left the hospital, I -- that's what  
11 I thought. When she came back from the hospital, that's what I  
12 thought. No one ever corrected anything to me.

13 She was a minor child, and I should have been  
14 notified of any of these things; and I was not.

02:40 15 MS. VORPAHL: All right. Let's take a look, starting  
16 with the very last line of the first page of Exhibit -- the  
17 Bortz Exhibit 153.

18 BY MS. VORPAHL:

19 Q. The sentence begins, "This having been said,  
02:41 20 Dr. Burnett" -- and you said Dr. Burnett is a doctor that your  
21 husband -- a psychiatrist that your husband took Jamie Jones  
22 to?

23 A. Correct.

24 Q. Okay. "Dr. Burnett reports that the patient has numerous  
02:41 25 psychosocial stressors."

02:41

1 You didn't believe that, did you?

2 A. No.

3 Q. You didn't believe that your daughter had any psychosocial  
4 stressors, did you?

02:41

5 A. No.

6 Q. "Including difficult relationship with both her parents."

7 You didn't believe that your daughter had a  
8 difficult relationship with either of her parents, did you?

9 A. We -- I mean, we were the typical mother/daughter

02:41

10 relationship, you know. We've had, you know, disagreements,  
11 just like any mother and daughter would have.

12 Q. The report goes on. Dr. Susan Lackson's report goes on and  
13 says, "Her mother herself may have a psychiatric illness, even  
14 some features suggestive of Munchausen's syndrome.

02:42

15 Do you see where it says that?

16 A. I do.

17 Q. And you know what Munchausen syndrome is, don't you?

18 A. I do.

19 Q. Tell the jury what it is.

02:42

20 A. It is when a person fakes an illness, I guess, for their --  
21 for attention, attention seeking.

22 Q. Or tries to make their child sick and then take their child  
23 to a medical care provider for care?

24 A. Correct.

02:42

25 But in this instance my daughter had a 102 fever.

0 2 : 4 2 1 I would be a very bad parent if I didn't take care of my  
2 daughter. I tried to be the very, very best mother that I  
3 could be.

4 Q. The report goes on and says, "Her father is reported to be  
0 2 : 4 2 5 an alcoholic and they went through a bitter divorce several  
6 year ago."

7 Do you see where it says that?

8 A. Correct. I don't know who would have reported that he was  
9 an alcoholic because I don't believe that.

0 2 : 4 3 10 Q. You didn't report that?

11 A. I didn't report that.

12 Q. All right.

13 A. I wouldn't have known who to report that to.

14 Q. Well, you're not suggesting that somebody just fabricated  
0 2 : 4 3 15 that and just stuck it in here, are you?

16 A. I do not believe -- while my ex-husband and I had a very  
17 bitter divorce, I would not be honest if I said I believe he's  
18 an alcoholic. I can say in all honesty that he -- I've never  
19 known him to be an alcoholic.

0 2 : 4 3 20 Q. All right. But, again, you don't have any suggestion as to  
21 how this got in here if it's not true --

22 A. I have no idea how it got in there.

23 Q. -- or if somebody didn't report it?

24 A. I don't know who --

0 2 : 4 3 25 THE COURT: Do you think your daughter might have had

0 2 : 4 3 1 the apprehension that her father was alcoholic?

2 THE WITNESS: I don't know that. I didn't ever  
3 believe he was an alcoholic.

4 THE COURT: Was there other sources of information  
0 2 : 4 3 5 other than your daughter and your husband?

6 THE WITNESS: I don't know. I was shocked the first  
7 time I read this report.

8 BY MS. VORPAHL:

9 Q. Then the report goes on and says in the next sentence, "In  
0 2 : 4 4 10 addition, the patient is changing schools and is sent to remove  
11 herself from a difficult situation."

12 You see that, don't you?

13 A. Yes.

14 Q. And this was in August of 2002. Is that right?

0 2 : 4 4 15 A. Yes. Where --

16 Q. A time -- I'm sorry.

17 A. Is there parts removed out of this record?

18 Q. There is a portion of the record redacted, by Court order.

19 A. Okay.

0 2 : 4 4 20 THE COURT: Yeah, that was my decision, not the  
21 counsel's. That was my decision.

22 THE WITNESS: Okay. Okay.

23 BY MS. VORPAHL:

24 Q. And this was in August. Is that right?

0 2 : 4 4 25 A. Yes.



02:44

1 Q. A time when people might change schools if they were going  
2 to?

3 A. Okay. Well, the only time I recall Jamie moving, I had  
4 moved several times and she changed schools accordingly.

02:45

5 Q. She changed schools three times. Isn't that right? She  
6 went to three different schools?

7 A. I believe so, yes.

8 Q. Right. So, you don't have any idea where that would have  
9 come from, "The patient is changing schools and is sent to  
10 remove herself from a difficult situation"?

02:45

11 A. I don't recall a difficult situation. I'm not sure where  
12 that came from.

13 Q. You do understand that through the rest of this report, a  
14 nurse and a physical therapist observe that your daughter is  
15 faking weakness, faking an inability to walk?

02:45

16 A. Okay.

17 Q. You understand that?

18 A. I do. I see it.

19 Q. Do you have any explanation for that?

02:45

20 A. I feel like my ex-husband, trying to gain custody of our  
21 daughter, through power of suggestion had them looking for  
22 things that were not there.

23 Q. So, through power of suggestion, your husband was able to  
24 get the physical therapist to report that the scissoring gait  
25 was voluntary?

02:46

02:46 1 A. I believe so, yes.

2 Q. And your husband, through power of suggestion, was able to  
3 get the patient's nurse to observe her walking from the  
4 bathroom unassisted until Jamie saw her nurse, at which point  
02:46 5 she began to stagger and grab for the walls?

6 A. I believe so. I --

7 Q. And your husband, through his power of suggestion, was able  
8 to get the doctor to conclude that these things further  
9 suggested that Jamie's "neurologic symptoms are, in fact,  
02:46 10 voluntarily or psychosomatic in nature"?

11 A. I would believe it was from whatever he had been talking to  
12 the therapist and the doctor about outside my presence.

13 Q. I want to change subjects with you a little bit.

14 You indicated that Jamie -- and you described the  
02:47 15 manner in which Jamie, you said, eventually met Kallan. Is  
16 that right?

17 A. Correct.

18 Q. Now, Kallan testified in his deposition that they met in  
19 the late summer of 2005, which I would take to be in August of  
02:47 20 2005. Is that consistent with your recollection?

21 THE COURT: You're speaking too fast now.

22 MS. VORPAHL: I'm sorry. I apologize, Judge.

23 THE COURT: Pose the question again.

24 BY MS. VORPAHL:

02:47 25 Q. You indicated in your direct examination that your daughter

02:47 1 eventually met Kallan Daigle. Do you recall that?

2 A. Correct, yes.

3 Q. I'm representing to you that Kallan Daigle testified in his  
4 deposition, under oath, that he met your daughter in the late  
02:47 5 summer of 2005. Is that consistent or inconsistent with your  
6 recollection?

7 A. I am not sure of the month that they met. She came back  
8 from Baghdad August the 5th, I believe. So, it had to have  
9 been after that. He just may have gotten his dates mixed up.  
02:48 10 So, I believe it had to have been later. She didn't come back  
11 from Baghdad until August 5th of 2005.

12 Q. So, you're saying that if Kallan Daigle testified under  
13 oath that he met her in the late summer of 2005, that's -- he's  
14 just wrong about that?

02:48 15 A. I believe he's confused about the date.

16 Q. All right.

17 A. I don't believe he meant to be wrong. I think he's just  
18 confused about the date, because the dates are very hard to  
19 remember for me.

02:48 20 Q. When you testified on direct examination, you told us about  
21 your interest in transportation. And I may have missed it.  
22 And I heard you talk about the Houston Air Cargo volunteer  
23 position and several other volunteer interests that you have.

24 What is your current employment?

02:49 25 A. My current employment? My current employment is

02:49

1 Posey International starting Tuesday the 5th.

2 Q. So, as we sit here today, you're not employed?

3 A. I have a job that will start on the 5th. So, I'm -- I'm  
4 presently not employed, that would be correct.

02:49

5 Q. And how long have you not -- been unemployed?

6 A. Since the 24th was my last day at my previous employer.

7 Q. Okay. Did you leave there voluntarily?

8 A. I did.

9 Q. And for what reason?

02:49

10 A. I was offered a position as a general manager with  
11 Posey International.

12 Q. Okay. Where is that business?

13 A. On Harvard Drive near La Porte.

14 Q. I believe you testified, too, that -- and I'm now moving to  
15 some of your testimony about Eric Iler.

02:50

16 A. Okay.

17 Q. And I apologize for jumping around. I'm trying to make  
18 this as brief as I can.

19 I believe you testified that Jamie told you that  
20 Frederick Heard was Eric Iler's boss at KBR?

02:50

21 A. He was either his direct boss or he was in HR. I'm not  
22 sure.

23 Q. Well, do you know what --

24 A. I can't recall --

02:50

25 Q. -- Jamie Jones told you?

02:50 1 A. I don't recall. It was along time ago, ma'am. So, with  
2 all due respect, I don't recall exactly.

3 Q. All right. She told you that he was an operations  
4 coordinator. Isn't that right?

02:50 5 A. She could have.

6 Q. And that he was not even in the same department that  
7 Mr. Iler was in?

8 A. I'm not sure.

9 Q. And that he, in no wise, was a supervisor to Mr. Iler?

02:50 10 A. I don't recall.

11 Q. Well, you know about sexual harassment policies, don't you?

12 A. From --

13 THE COURT: Why don't you make that question a little  
14 bit more --

02:51 15 MS. VORPAHL: I will.

16 BY MS. VORPAHL:

17 Q. You've worked at a number of different places, haven't you?

18 A. Yes.

19 Q. You've worked at six or eight different places that you've  
02:51 20 told me about in your deposition. Is that accurate?

21 A. Throughout my life.

22 Q. Exactly. And I believe you told me that you're well versed  
23 in sexual harassment policies. Is that right?

24 A. From this case.

02:51 25 Q. Well, you've made a claim yourself, ma'am, haven't you?

02:51

1 A. I have not.

2 Q. You have not availed yourself of company policy against a  
3 co-employee?

4 A. Not for sexual harassment.

02:51

5 Q. All right. Well, you knew, in 2004 and 2005, that if a  
6 woman is sexually harassed or coerced into a sexual  
7 relationship by a superior, well, a woman has rights, including  
8 the right not to have that done to her, didn't you?

9 A. And so do men, correct.

02:51

10 Q. All right. But you knew that in 2004 and 2005?

11 A. And 2003 and 2002 and now, present. I've always known  
12 that, I mean, as far back as I can remember in my adult life, I  
13 guess.

14 Q. But you didn't counsel Jamie to follow her company's sexual  
15 harassment policy, did you?

02:52

16 A. I'm not sure what your question is.

17 Q. You did not counsel your daughter to follow KBR's policy  
18 regarding sexual harassment?

19 A. I asked her to report it, and we called Frederick Heard.

02:52

20 Q. I believe you testified that when Jamie called you from  
21 Iraq, she told you that she was being held in a shipping  
22 container. Is that right?

23 A. Yes.

24 Q. Do you continue to believe that that is correct?

02:52

25 A. I do.

02:52

1 Q. That's what you believe as you sit here today?

2 A. I believe that she was in a shipping container, yes.

3 Q. How long do you believe that she was in that shipping  
4 container?

02:53

5 A. For a few days. I'm not sure how many days. I don't  
6 recall how many days.

7 Q. Okay. You believe that she was in a shipping container,  
8 held by KBR for a few days?

9 A. I believe that's accurate.

02:53

10 Q. And that's because that's what she, Jamie Jones, has told  
11 you?

12 A. And her father.

13 Q. Jamie and her father have both told you that she was held  
14 in a shipping container by KBR for several days?

02:53

15 A. Correct.

16 Q. Okay. Since Jamie returned from Iraq, you and she and  
17 Kallan have collaborated on a book. Isn't that right?

18 A. Jamie initially started writing the book, as I encouraged  
19 her to for therapy. And then we started, you know, just  
20 putting it together just to try to do something, being  
21 supportive of Jamie and trying to do something with her. So,  
22 we both -- we both contributed. I would say I probably  
23 contributed more than Kallan did.

02:54

24 Q. Part of what's written in this book is true and part of  
25 what's written in this book about Jamie's experiences in Iraq

02:54

02:54 1 is not true. Isn't that right?

2 A. Perhaps, yes. There's some fiction and non-fiction in the  
3 book.

4 Q. How do you suppose that it was being supportive of your  
02:54 5 daughter to write things that were not true in a book?

6 A. Well, there are certain things that, you know, were changed  
7 that, you know, names and -- you know, couldn't recall  
8 certain -- just to fill in the gaps. You know, we filled in  
9 the gaps with different -- we just filled in the gaps,  
02:55 10 basically.

11 Q. You filled in the gaps with things that you thought might  
12 help sell a book?

13 A. Well, when we were writing it, I had no intent of it being  
14 a -- selling it as a book.

02:55 15 Q. Well, what parts of --

16 A. It was initiated as therapy for Jamie and just being  
17 supportive. I wanted her to have a way to have an outlet; and,  
18 so, we put together -- we put it down on paper.

19 Q. And again, ma'am, I'll ask you. How did it provide an  
02:55 20 outlet for Jamie for you to write about untrue things about her  
21 experiences in Iraq, in a book?

22 A. Doing a project together.

23 Q. And you felt that that was therapeutic to Jamie, for you to  
24 write untrue things about Jamie's experiences in Iraq in a  
02:55 25 book?



02:55 1 THE COURT: I think she's answered the question. She  
2 did it for, I gather, several reasons.

3 One of which was to do something with your  
4 daughter?

02:56 5 THE WITNESS: Yes.

6 BY MS. VORPAHL:

7 Q. And you know that Jamie and Kallan have tried to sell this  
8 book, don't you?

9 A. Perhaps. I'm not sure.

02:56 10 Q. Do you know that, ma'am, or don't you?

11 A. I'm not sure.

12 Q. You don't know whether they have or not.

13 A. I'm not sure.

14 Q. And they've also tried to make money from selling movie  
02:56 15 rights. Isn't that right?

16 A. I'm not a hundred percent sure.

17 Q. And your daughter has even hired an agent to do that?

18 A. Perhaps. I'm not a hundred percent sure.

19 Q. And she received at least one advance on this book. Isn't  
02:56 20 that right?

21 A. I'm not aware of it.

22 Q. \$1,000, you're not aware of that?

23 A. I'm not sure.

24 Q. And they're still trying to sell the book. Isn't that  
02:56 25 right?

02:56 1 A. I'm not sure. That's something you would have to ask  
2 Jamie.

3 MS. VORPAHL: All right. Those are all the questions  
4 I have, your Honor.

02:56 5 THE COURT: Thank you.

6 Any redirect?

7 MR. ESTEFAN: No, your Honor.

8 THE COURT: Okay. You may step down. Thank you very  
9 much. Thank you. You're free to go.

02:56 10 Do you wish to take a break now?

11 Okay. Would all please rise for the jury?

12 *(Jury not present)*

13 THE COURT: Please be seated.

14 Okay. Who's next?

02:57 15 MR. ESTEFAN: Kallan Daigle.

16 THE COURT: Do we need to discuss any part of his  
17 testimony?

18 MR. ESTEFAN: Sorry. What, your Honor?

19 THE COURT: Do we need to discuss any part of his  
02:57 20 testimony?

21 MR. ESTEFAN: We do. There's a couple of things.

22 Judge, we have -- Mr. Daigle had an arrest in  
23 2003 for filing a false police report.

24 THE COURT: Okay. Is that indicative of the incident?

02:58 25 MR. MCKINNEY: We're not going into that.

02:58

1

MS. CATES: I don't have it in mine.

2

MR. McKINNEY: Nor my cross, not unless he stands up and says that he's never been arrested.

4

02:58

5

MR. ESTEFAN: Okay. The reason why, it was in his deposition and --

6

THE COURT: Okay. It's agreed.

7

MR. ESTEFAN: Good.

8

The only other thing that I wanted to cover with the Court -- and I think you've made a preliminary ruling on this, Judge -- is about the bowling alley incident where Mr. Kallan Daigle, in his deposition, pled the Fifth. Is he limited to only pleading the Fifth?

02:58

10

11

12

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02:58

15

THE COURT: Yeah. If that's the best he could do at deposition, he doesn't get to -- yeah, we need -- maybe you-all could step toward the back, if you don't mind.

16

17

18

MR. ESTEFAN: I mean, can he explain why he pled the Fifth or can he just -- is he limited to, "I plead the Fifth" and that's it?

19

02:58

20

21

22

23

24

THE COURT: No. My ruling was he cannot augment his testimony at deposition by now saying something he didn't say there. So, he certainly cannot waive the Fifth and testify and I -- unless you have a reason I haven't thought of, I don't know why he should be allowed to explain his invocation of the Fifth when he -- did he explain it at the deposition?

02:59

25

MR. ESTEFAN: I don't know that he was asked to

02:59 1 explain it, Judge. But it's clear that he had a reason for  
2 doing so. And to just say, "I plead the Fifth," and leave it  
3 at that, you know, I think it would -- it leaves --

4 THE COURT: I don't mind providing an instruction that  
02:59 5 at his deposition he invoked the Fifth Amendment and on that  
6 basis respectfully declined to answer questions and it is my  
7 ruling that, having done so at the deposition, he cannot  
8 testify beyond that now. I don't mind saying that.

9 MS. CATES: That's fine.

02:59 10 MR. ESTEFAN: That's fine with you?

11 MS. CATES: Uh-huh.

12 MR. ESTEFAN: Seems fine with her, Judge.

13 MS. CATES: Well, no, I'm not saying -- I was just  
14 voicing my opinion, my perspective.

02:59 15 THE COURT: Is that all right with you? I don't mind  
16 if you lead him through it yourself in testimony.

17 But it just seems to me very unfair. The reason  
18 you take depositions is to avoid trial surprise; and it seems  
19 very unfair now for him to come out with testimony that was not  
03:00 20 even hinted at in his deposition.

21 MR. ESTEFAN: What I would prefer to do, your Honor,  
22 is ask Mr. Daigle why he pled the Fifth and let him at least  
23 explain why he did it, to this jury, it was his mindset, his  
24 concern for being potentially prosecuted, whatever his reasons  
03:00 25 were.

03:00 1 THE COURT: What were those reasons? Let's talk about  
2 it now.

3 MR. ESTEFAN: He was in the Navy. I am sure that,  
4 without having asked him ahead of time why he pled the Fifth in  
03:00 5 his deposition -- because I did not -- I wasn't there for it --  
6 it was either repercussions from -- and getting in trouble from  
7 the navy and/or criminal prosecution. And maybe Mr. Kelly  
8 knows more than that but --

9 THE COURT: Why does that help him any?

03:00 10 MR. ESTEFAN: I don't know if it helps him any, but  
11 just saying, "I plead the Fifth" now on the stand --

12 THE COURT: I don't mind saying it for him. I don't  
13 mind saying it for him.

14 I do think the Fifth Amendment should be  
03:01 15 respected, absolutely. I never allow a question once it's been  
16 invoked. But to say something now beyond what he said at the  
17 deposition just seems to me unfair surprise unless -- maybe I'm  
18 wrong about the notice. Maybe you know what he was -- no?

19 That just does not seem to me fair play, you  
03:01 20 know. If it were, then I would advise all my clients to invoke  
21 the Fifth.

22 MR. ESTEFAN: No, I understand, Judge. I understand.  
23 I respect the Court's ruling.

24 THE COURT: Okay. Thank you.

03:01 25 MS. CULLEN: Your Honor, I'm sorry. Could I

03:01 1 briefly -- I'm sorry, Judge. I have exhibits that I used, and  
2 just I wanted to announce that I discussed with Mr. Kelly and  
3 Ms. Vorpahl and we have agreement among counsel that if any of  
4 us use exhibits during examination that have not yet been  
03:01 5 admitted to the record, if there's no objection at the time  
6 they're used, we agree that they're going to be admitted.

7 THE COURT: Very well. Very well.

8 MS. VORPAHL: And we think that will cut down on the  
9 amount of time we have to flap around. It may require us to  
03:02 10 jump up if we object.

11 THE COURT: I agree. That sounds like a Solomonic  
12 resolution.

13 MS. CULLEN: Your Honor, at this time, by agreement, I  
14 offer to be admitted -- you already have stickies for all the  
03:02 15 numbers -- Bortz 5, Bortz 6, Bortz 35, Bortz 204, Bortz 205,  
16 Bortz 206, Bortz 207, and Bortz 235.

17 MS. VORPAHL: I don't think Mr. Kelly intended that to  
18 cover the book, I think. So, I will not put that into  
19 evidence.

03:02 20 MR. KELLY: Appreciate that.

21 MS. CULLEN: Bortz 198, and Bortz 210.

22 THE COURT: Okay. Anything else?

23 MR. KELLY: Just wondered if you had any more babies  
24 for us to split, your Honor.

03:02 25 THE COURT: Babies to split? Yeah, there will be a

03:02 1 few more.

2 *(Recess was taken from 3:02 p.m. to 3:15 p.m.)*

3 THE COURT: Let me get my direction straight. Do you  
4 want us to start off with an instruction?

03:14 5 *(Discussion off the record)*

6 THE COURT: And now do you want me to give the  
7 instruction we talked about?

8 MR. ESTEFAN: I do, your Honor.

9 THE COURT: You do. Okay.

03:15 10 MR. ESTEFAN: I just asked Mr. Daigle what his  
11 preference is, and he said he would prefer you do it. So --

12 THE COURT: Okay.

13 MR. MCKINNEY: Now, Judge, does that mean I cannot ask  
14 him about statements that he made at the time, that have been  
03:15 15 documented by others, such as the investigating officers?

16 THE COURT: No. If you have a third-party source for  
17 that information, you can ask.

18 MR. MCKINNEY: I can ask him if he said this to  
19 someone?

03:15 20 THE COURT: I think that's fair.

21 MS. VORPAHL: We have four additional exhibits  
22 admitted by agreement over the last day or so.

23 THE COURT: Give them to Mrs. Loewe.

24 MS. VORPAHL: Okay. I will.

03:15 25 MR. ESTEFAN: Do what by agreement?

03:15

1 MS. VORPAHL: Four exhibits. I talked to Todd about  
2 it.

3 THE COURT: You can line them up, yes, sir.

03:15

4 MR. ESTEFAN: That does concern me, your Honor. If  
5 he's going to use these other sources to say did you tell  
6 somebody this, that, or the other, Mr. Daigle is not limited to  
7 saying, "I plead the Fifth," unless that's exactly what he said  
8 in his deposition, right?

03:16

9 THE COURT: Did you ask about those questions at the  
10 deposition?

11 MR. McKINNEY: No, Judge. I'm asking him about -- I  
12 would purport to ask him about what was taken down at the time  
13 by the investigating officers, from him.

03:16

14 THE COURT: Well, he can either answer that or invoke  
15 the Fifth. I mean, what's wrong with that?

16 MR. KELLY: All we want is -- if he's asked a direct  
17 question like that, your Honor, as long as he can explain the  
18 answer, if he's got an answer -- I don't know exactly what he's  
19 going to ask him; so, it's a little bit --

03:16

20 THE COURT: I guess I need to know more about his  
21 deposition. Did he decline to answer all questions?

22 MR. McKINNEY: He actually answered some and didn't  
23 answer some. And if he doesn't take the Fifth, I'll deal with  
24 that. I mean, if I ask the question, I invite the answer.

03:16

25 THE COURT: Okay. We're talking now about kind of the



03:16 1 exceptions following the rule, aren't we?

2 What's the purpose of -- what I was worried about  
3 was his coming up with surprise testimony. And I'm still  
4 worried about that. But if he answered some of the questions,  
03:17 5 then those were questions you can surely ask him again today.

6 MR. MCKINNEY: And I want to be a hundred percent  
7 clear with the Court. I'm not necessarily going to ask him  
8 questions based on answers he gave at his deposition; rather, I  
9 intend to ask him questions about statements he made at the  
03:17 10 time while he was in custody.

11 And the reason why I am going to do that is  
12 because the Fifth Amendment business cuts two ways; and one of  
13 the ways I don't like at all because I think that Ms. Jones'  
14 recounting of the San Diego events is subject to question on  
03:17 15 the credibility side.

16 If all her husband does is walk into court and  
17 say, "I'm not answering questions. I'm taking the Fifth  
18 Amendment," that actually tends to corroborate indirectly  
19 Ms. Jones' version of the report.

03:17 20 THE COURT: That's one of the problems with the Fifth.

21 MR. MCKINNEY: I plan to ask him questions about what  
22 happened in San Diego. And if he keeps taking the Fifth, I'm  
23 fine with that.

24 THE COURT: What kind of questions did he invoke the  
03:18 25 Fifth at the deposition?

03:18

1

MR. MCKINNEY: "Did you hit your wife?"

2

"Taking the Fifth."

3

MS. VORPAHL: Or, "Did you tell the authorities at the time you did not hit your wife?"

4

03:18

5

THE COURT: Well, on the Fifth Amendment, it would be unfair -- and there's ample precedent for this -- to ask again, in front of the jury, something he's already taken the Fifth on. Now, if there are other questions he did answer, there's absolutely no bar to your asking about those or things that weren't asked one way or the other at the depo.

6

7

8

9

03:18

10

11

MR. ESTEFAN: And that's our problem, Judge, because he was only asked a series of about three or four questions. He took the Fifth on those. But now if we're going to get into back dooring it --

12

13

14

03:18

15

THE COURT: I thought he answered a lot of questions.

16

17

MR. MCKINNEY: Some he did, some he didn't. And the problem is the mere taking of the Fifth hampers -- sorry.

18

19

If he takes the Fifth in front of the jury in response to my questions, he's got the right to do that.

03:19

20

THE WITNESS: Yes, he does.

21

22

MR. MCKINNEY: But under Texas law, that is actually done in the presence of the jury and the jury is allowed --

23

24

03:19

25

THE COURT: Yes, it would be.

MR. MCKINNEY: -- the jury is allowed to draw a negative inference from that because he's married to Ms. Jones.

03:19 1 THE COURT: Well, the jury can draw whatever inference  
2 it wishes; but I'm not going to instruct on a negative  
3 inference.

03:19 4 MR. McKINNEY: I'm not going to ask you to instruct on  
5 a negative inference. I just want to be allowed to examine  
6 this witness on what happened in San Diego, and he either takes  
7 the Fifth or he doesn't. And I'm not going to complain if he  
8 doesn't take the Fifth. If I ask a question, I invite the  
9 answer. So, I'm just --

03:19 10 THE COURT: What I am cautioning you not to do is ask  
11 a question as to which he's already taken the Fifth. That, I  
12 think, is unfair. He's taken the Fifth, he's not going to  
13 testify on that, we don't need to go through it again.

03:19 14 MS. VORPAHL: We can't even let the jury know that  
15 he --

16 THE COURT: I'm going to provide an instruction.

17 MS. VORPAHL: And then we have to avoid that whole  
18 area?

19 MR. McKINNEY: Well, let's hear what they have to say.

03:19 20 MR. KELLY: I think the Court is right in that because  
21 otherwise, if we knew that the question was going to be asked  
22 on cross-examination, then -- especially if he was going to  
23 expect to elicit an answer, then Mr. Estefan would bring it out  
24 on direct. And we would be allowed to bring it out on direct  
03:20 25 so that it didn't appear that we were hiding anything from this

03:20 1 jury. It's prejudicial to allow them to do that.

2 THE COURT: The reason you can't bring matters as to  
3 which he took the Fifth at the deposition is the unfair  
4 surprise reason. And they're not burdened by the same concern,  
03:20 5 because it was not their client that took the Fifth.

6 MR. MCKINNEY: I'm waiving --

7 MS. VORPAHL: They don't represent Mr. Daigle, just  
8 for clarity.

9 THE COURT: I know.

03:20 10 MR. MCKINNEY: I am waiving --

11 THE COURT: I know that. I thought Mr. Daigle  
12 asserted the Fifth.

13 MS. VORPAHL: Yes, your Honor.

14 THE COURT: And they're the ones calling this witness.  
03:20 15 That's my point.

16 MR. MCKINNEY: I am waiving unfair surprise. I'm not  
17 worried about it. I will deal with whatever the witness --

18 THE COURT: This was not the position that was argued  
19 to me previously.

03:20 20 MS. VORPAHL: You're right, it's not. But I have to  
21 tell you -- and it's maybe my own density. I didn't understand  
22 we weren't going to be able to go into the question of what  
23 happened in San Diego at the bowling alley.

24 THE COURT: To the extent he did not invoke the Fifth  
03:21 25 about those matters, you can. You can. We started off this

03:21 1 discussion with, "Can we go into statements he made to third  
2 parties."

3 And the answer is yes, unless they've already  
4 been covered by the invocation of the Fifth.

03:21 5 MS. CATES: We'll waive the Fifth Amendment and let  
6 him answer the question.

7 MR. MCKINNEY: Waive the surprise?

8 MS. CATES: Waive the surprise argument. Because our  
9 problem is --

03:21 10 THE COURT: All right. All right. Is that your  
11 position, to?

12 MS. VORPAHL: That's fine. No, no, no -- Susan  
13 Cates -- but it was because we did not -- we thought we would  
14 be able to ask the same questions and have him say, "I am  
03:21 15 asserting my Fifth amendment right."

16 THE COURT: No, I was going to cover that with one  
17 instruction.

18 MS. VORPAHL: He can answer --

19 THE COURT: Okay. All right. You can go into  
03:21 20 anything you want. You can go into anything you want.

21 MR. ESTEFAN: Well, that changes things considerably,  
22 Judge. Because Mr. Daigle was not prepared to come in here and  
23 go into everything after this Court ruled previously that it  
24 was going to be he had to stick to what he said in his  
03:21 25 deposition.

03:21 1 MS. VORPAHL: They don't represent Mr. Daigle. He  
2 needs to come in here and testify as to what he knows. They  
3 don't need to go out and talk to him about what his testimony  
4 is going to be.

03:22 5 THE COURT: No, no. They don't represent Mr. Daigle,  
6 but it's their witness. And if you want to call somebody else  
7 next, you can do that.

8 MR. ESTEFAN: There is nobody else next. He's the  
9 last live witness today, Judge. We have two experts on in the  
03:22 10 morning and they're -- because they're experts, they're coming  
11 first thing in the morning and there's no one else scheduled  
12 this afternoon. So --

13 THE COURT: What do you want me to do? I mean, I --

14 MR. ESTEFAN: I liked your first ruling, because it  
03:22 15 was what we were all operating under.

16 THE COURT: Well, I guess I was insufficiently clear.  
17 I did not mean that you could ask him the same questions all  
18 over again and have him say Fifth Amendment, Fifth Amendment,  
19 Fifth Amendment.

03:22 20 That's why I offered to do the instruction and  
21 take care of that once, not repeatedly.

22 MS. VORPAHL: I apologize. I misunderstood, but -- I  
23 did.

24 MR. MCKINNEY: Yeah. The only obstacle to Mr. Daigle  
03:23 25 testifying and either taking the Fifth or not is a -- an

03:23 1 objection that, well, if he changes his testimony from the  
2 Fifth to some substantive answer, we're surprised.

3 THE COURT: Right.

4 MR. McKINNEY: Otherwise, it's like he's just any  
03:23 5 other witness; he's subject to wide open cross-examination,  
6 particularly as the husband of the party opponent. All  
7 defendants are waiving surprise. Kallan Daigle is now a  
8 witness like anybody else, subject to full cross.

9 THE COURT: Okay.

03:23 10 MS. CATES: Agreed.

11 MS. VORPAHL: Yes.

12 MR. KELLY: But, your Honor, if that's the case, then  
13 I think we ought to be entitled to some time to at least talk  
14 to the witness because to waive it after this last second after  
03:23 15 fighting so vehemently to have it in yesterday, it does  
16 prejudice the plaintiffs.

17 MR. McKINNEY: Well, it kind of implies that yesterday  
18 you were ready to go exactly the direction we were wanting to  
19 go now.

03:23 20 MR. KELLY: No. Mr. Daigle was informed today, or  
21 whenever the Court's ruling was, that he was going to have to  
22 stick with exactly only asserting the Fifth because that was  
23 the Court's ruling.

24 THE COURT: And he can do that. He can do that again  
03:24 25 if he wishes to.

03:24 1 MR. ESTEFAN: Well, and then -- but they're going to  
2 get to go into all the circumstances around that, as I  
3 understand the Court's ruling.

4 THE COURT: He did not make a complete invocation of  
03:24 5 the Fifth. That was his choice.

6 MR. ESTEFAN: No, your Honor. If you would like to  
7 read the transcript, I've got it right here. Every question  
8 they asked him relating to the San Diego bowling alley incident  
9 in his deposition, he pled the Fifth on.

03:24 10 THE COURT: How can you-all so disagree so basically  
11 about --

12 MR. ESTEFAN: Here's the transcript. I mean, I have  
13 the deposition right here.

14 THE COURT: I can't read the whole deposition.

03:24 15 MR. ESTEFAN: It's not. It's two pages of the Fifth  
16 Amendment.

17 MR. McKINNEY: I don't care how many times he took the  
18 Fifth Amendment in his deposition. He's either got to do that  
19 in front of the jury so that the jury can determine the  
03:24 20 totality of the circumstances that my client faces in this case  
21 or he can answer freely and in detail. I don't care which one  
22 he does, but I want to examine this witness on what happened in  
23 San Diego. And I don't want --

24 THE COURT: It sounds like what was said previously,  
03:25 25 that Mr. Daigle was prepared to testify fully, including as to



03:25 1 the questions where he previously invoked the Fifth, when he  
2 was called in this trial. And if that is so, I don't know why  
3 you shouldn't be ready to go with him.

4 MR. ESTEFAN: Because he has -- when I said -- all we  
03:25 5 were asking for, Judge, is -- is he limited to, "I plead the  
6 Fifth, but here's why."

7 And you said, "No, he can't even say that."

8 THE COURT: No.

9 MR. ESTEFAN: He can't -- if -- it's either he sticks  
03:25 10 with --

11 THE COURT: But at one point, as you-all made trial  
12 preparations, surely he was prepared to testify to what he  
13 knew. I can't believe this is unfair surprise to you. He  
14 should have one story, one story he can tell because he's under  
03:25 15 oath and it should not vary.

16 MR. ESTEFAN: He has one story. He's just -- the  
17 rules keep sort of changing. It's a moving target, Judge.  
18 Because ten minutes ago we were going in here with a different  
19 ruling.

03:25 20 MR. HEDGES: Your Honor, what happened, happened. He  
21 was there. He knows what happened. Whether he's going to  
22 refuse to tell it or he's going to open up and tell it doesn't  
23 change his -- it shouldn't change what, in fact, happened at  
24 the time.

03:26 25 THE COURT: That's the point I was making. Yeah, I

03:26 1 agree.

2 MS. VORPAHL: We're happy for you to talk to him and  
3 say: Now the parties have agreed that you don't have to stand  
4 behind or stand on the Fifth Amendment privilege that you  
03:26 5 previously asserted and so you are now free to answer the  
6 questions --

7 THE COURT: I think it's not a point right now of  
8 legal nuance. It's a point of client preparation. Not client  
9 preparation. Witness preparation. But I'm really loathe to  
03:26 10 knock off -- we've knocked off so often.

11 MR. ESTEFAN: If you'll give me five minutes with him,  
12 your Honor.

13 THE COURT: Okay. Five minutes.

14 MR. KELLY: Because he was coming in here, ready to  
03:26 15 say, "I plead the Fifth" to every one of those questions.

16 THE COURT: All right.

17 *(Jury present)*

18 THE COURT: Okay. Call your next witness, please.

19 MR. ESTEFAN: Kallan Daigle.

03:30 20 THE COURT: Yes, sir. If you make your way up here,  
21 we're going to put you in this seat. Before you take your  
22 seat, Mrs. Loewe will administer the oath.

23 MS. LOEWE: Do you solemnly swear the testimony you're  
24 about to give in the matter now before the Court will be truth,  
03:30 25 the whole truth, and nothing but the truth?

03:30

1 THE WITNESS: I swear.

2 THE COURT: Please be seated, and try to make yourself  
3 as comfortable as you can be. And please speak directly into  
4 the mic. We've had some trouble with people when they lean  
5 back and whatnot. The mic is adjustable.

03:31

6 You may inquire.

7 MR. ESTEFAN: Thank you, your Honor.

8 **JOSEPH KALLAN DAIGLE, DULY SWORN, TESTIFIED:**

9 **DIRECT EXAMINATION**

03:31

10 BY MR. ESTEFAN:

11 Q. Good afternoon.

12 A. Hi.

13 Q. Would you state your name, please?

14 A. My name is Joseph Kallan Daigle.

03:31

15 Q. It seems a little artificial, Kallan, for me to be calling  
16 you Joseph Kallen Daigle, because I know you as Kallan. Is  
17 that the name you go by?

18 A. Correct.

19 Q. Tell me about yourself from about high school forward.

03:31

20 Let's -- not just me, tell our jury some about yourself.

21 A. Okay. I was raised in the Conroe area. I was born in  
22 Bryan, Texas. I went to The Woodlands High School, graduated  
23 in 2001. I did a semester of college over at Lone Star  
24 College.

03:31

25 And then I got a job offer to work offshore for

03:31 1 Transocean, and I worked offshore for Transocean for awhile.

2 And I switched over to Pride Offshore. And I was still working  
3 with Pride Offshore whenever I met my wife, Jamie.

4 And I quit working offshore to join the military,  
03:32 5 and I joined the navy. And I was an aviation structural  
6 mechanic in the navy, and I worked on helicopters throughout my  
7 navy career. And I was stationed in San Diego my entire navy  
8 career.

9 Q. Thank you.

03:32 10 A. You're welcome.

11 Q. Now, you've mentioned that you're married to Jamie.

12 A. Correct.

13 Q. I would like to take you back to the time when you first  
14 laid eyes on Jamie Jones. Do you remember where that was?

03:32 15 A. Yes. It was at my apartment complex. It was in between  
16 shifts of working offshore. I would go out two weeks, and I  
17 would be off for two weeks. And I was driving in my truck home  
18 from -- I don't know where. And she was out walking. I think  
19 she was with her mother. And I rolled down my window, you  
03:33 20 know. When I first saw her, I thought, "Wow, she's beautiful,  
21 I would like to get to meet her."

22 And I was single at the time. And so, I was  
23 like, "Hey, what's up? What are you doing?"

24 She was like, "What's it look like I'm doing?  
03:33 25 I'm walking here."

03:33 1 She was very abrasive, wasn't very forthcoming,  
2 and didn't seem willing to meet me. So, I rolled my window  
3 back up and went home.

03:33 4 And, then, the actual time that I think I  
5 actually first got to meet her was the apartment complex. Her  
6 mom and her lived in the same apartment complex as me. And  
7 they were having, like, a little get-together, like a barbecue.  
8 And I had offered to walk her and her mom back to her house.  
9 And her mom actually got my phone number and made Jamie call me  
03:33 10 the next morning.

11 I think it was really early, like 5:30-ish or  
12 6:00. And I don't think she expected me to answer the phone,  
13 and I did. And I was able to convince her to have lunch with  
14 me. And from then on, we've been pretty much inseparable.

03:34 15 Q. Thank you. What time frame are we talking about for that  
16 encounter you just told us about?

17 A. I'm not really good with dates. I kind of remember things  
18 in seasons. So, I remember it was warm outside and, so, I  
19 believe, you know, it was like the end of summer-ish. But with  
03:34 20 the Texas weather, you know, it stays warm pretty late in the  
21 year.

22 So, I don't see Texas as having a fall or a  
23 spring too much. So, it's pretty much summer or winter to me  
24 always.

03:34 25 Q. All right. But that was in the year 2005?

03:34 1 A. Yes.

2 Q. All right. And you and Jamie then, I suppose, began dating  
3 after that?

4 A. Correct. Pretty much -- it was not the normal dating  
03:34 5 situation, I guess, as you would expect. Her mom went with us  
6 just about everywhere for a really long time, I guess, until  
7 Jamie felt comfortable with me alone. And then, from there,  
8 you know, we dated for quite awhile, got engaged about six or  
9 seven months after I met her, I believe, somewhere around  
03:35 10 there.

11 And right around the time we got engaged is when  
12 I think I decided to join the military and, you know, create a  
13 better future for us.

14 Q. Okay. So, when you were dating Jamie, other than her  
03:35 15 mother chaperoning you and Jamie and, really -- were there  
16 other things that you noticed about Jamie that were a little  
17 different than you would expect?

18 A. Yes. I noticed pretty early on that she was having to go  
19 to a lot of therapy appointments and I volunteered to drive her  
03:35 20 to those and I drove her to many, many appointments and  
21 every -- anywhere from two to three times a week. She wouldn't  
22 go anywhere by herself. It was either with her mom or, once  
23 she was comfortable enough, with me.

24 And just -- excuse me for a second. I'm trying  
03:36 25 to remember -- and -- and she just had, like, a lot of rough

03:36 1 days, more than average. And as a guy, I would, you know, try  
2 and be as helpful to her as possible. And, you know, I cared  
3 about her a lot. And I loved her to death; so, I wanted to do  
4 everything possible to help her.

03:36 5 Q. Okay. Have you ever asked what happened to Jamie in Iraq?

6 A. No. I've never really wanted to sit down and get details  
7 from her. It's really hard for me because I care about her so  
8 much. I don't think I could really accept the details of what  
9 happened to her. I know I've heard her testimony at Congress  
03:36 10 and whatnot, but that was very much after the fact and not in  
11 great detail.

12 Q. So, do you know the bits and pieces of Jamie's story?

13 A. Yes. I've put together a compilation of a broad  
14 description of what I believe happened and -- yeah.

03:37 15 Q. Is that enough for you for now?

16 A. Yes. I would rather not know the details. And I've tried  
17 to keep myself from it as much as possible. It's really  
18 painful for me and hard for me. I --

19 Q. Well, are you Jamie's support system, or a large part of  
03:37 20 it?

21 A. Yeah. She doesn't go to public places by herself, really,  
22 hardly that much at all. I mean, she'll run her car out of gas  
23 before she gets gas because it's a public place that she  
24 like -- I think that she's afraid of -- like, people, crowds.

03:38 25 I've always had to go to the grocery store with

03:38 1 her. I've always gone to the grocery store for us. I can't  
2 really recall that she's ever been by herself to a grocery  
3 store.

4 She has run her car out of gas because she won't  
03:38 5 go to a gas station, and I've had to deal with that. And I've  
6 gotten pretty good at, you know, keeping her car full of gas  
7 and making sure I get everything that she needs at the grocery  
8 store. And anyplace public she is not comfortable unless she's  
9 with someone that she trusts, like me.

03:38 10 And for a long time there, it was just me and her  
11 in San Diego whenever I was in the military. So, I felt that  
12 she relied on me heavily for a lot from her day-to-day living.  
13 Q. Well, let's talk about San Diego, Kallan. When did you and  
14 Jamie go to San Diego?

03:38 15 A. Oh, it was just after my boot camp. I think it was the  
16 beginning of the year, and I really don't remember the exact  
17 year. I'm sorry.

18 Q. You remember what season it was when you went to boot camp,  
19 don't you?

03:39 20 A. It was toward the end of winter. Because Chicago winter is  
21 pretty intense. And I did boot camp over the winter time in  
22 2006. So, I would imagine it was the beginning of the year,  
23 maybe right at the end of winter, 2007.

24 Q. When you and Jamie moved to San Diego, did you-all know  
03:39 25 anybody out there or have family out there?



03:39 1 A. No. I didn't have family, and I don't recall if Jamie -- I  
2 don't think she had family out there.

3 Q. So, when you're away at work every day at the navy, where  
4 is Jamie?

03:39 5 A. She would stay at home. We had our first kid when we were  
6 in San Diego. So, after alone for awhile, she was -- she had  
7 our kid and she would be home with the kid. So --

8 Q. Well, what would you do for recreation when you were in  
9 San Diego?

03:40 10 A. Me and Jamie used to love to go bike riding. They had a  
11 bunch of bike paths by the beach. We would do, like, nature  
12 trail walks. We'd do walks on the beach. We would look for  
13 that sand-worn glass on the beach. You find a lot in Southern  
14 California there.

03:40 15 And I think that was actually her favorite thing  
16 to do, which was walks on the beach with me.

17 Q. Did you have -- did you and Jamie have marital difficulties  
18 sometimes?

19 A. Yes. Me and Jamie, I think we have a really healthy  
03:40 20 relationship; but we've had our rough patches. And -- it's  
21 normal for us, but I think it's not the normal marriage  
22 situation that most people would have due to the fact that she  
23 has such problems with her PTSD where she needs an escort  
24 places constantly. She's not comfortable alone. She is very  
03:41 25 scared, at nighttime more so than the daytime.

03:41 1 And, I mean, she has -- on a day-to-day basis her  
2 mood can change from, you know, being depressed; and a number  
3 of things can trigger her to be in a different state than  
4 normal people would be in on a day-to-day basis.

03:41 5 Q. There's been some testimony about Jamie having some  
6 disfigurement in her breasts. Has that caused any problems in  
7 your marriage?

8 A. Yes, it has, as far as our physical relationship. She's  
9 not very comfortable with intimacy, as I think normally a  
03:41 10 person would be. And it's a constant reminder to her, keeps  
11 everything at the surface of what happened to her that long  
12 ago. And to keep it on the surface for that long is, I'm sure,  
13 very hard.

14 Q. How about the emotional and psychological problems that  
03:42 15 Jamie is having, does that cause marital difficulties?

16 A. Yes. And every marriage has its rough part, like I said.  
17 But I think we've had a little bit of a few extra factors to  
18 deal with. I mean, I've woken up in the middle of the night  
19 and she's been just sobbing and, you know, asked me the  
03:42 20 question, "Why? Why could this have happened to me?"

21 And I have to assume she meant what happened in  
22 Iraq. She wasn't sitting there, you know, telling me the  
23 story. And I do my best to comfort her in every way I can.

24 And just certain things could, I guess, trigger  
03:42 25 her day to go wrong for her and -- I mean, I do my best to be

03:42 1 there for her.

2 Q. Were both of your daughters planned?

3 A. Yeah. They were, very much so. And I think planning it  
4 helped us with our physical relationship, to have the  
03:43 5 daughters, having them planned and kind of putting them in the  
6 schedule made it more possible for us. And I love having kids.  
7 It's the greatest gifts ever. We kind of planned it as gifts,  
8 as well.

9 Q. Well, we need to talk about a particular difficult patch  
03:43 10 you had in San Diego. Do you know what I am talking about?

11 A. I believe you're talking about the bowling alley incident.

12 Q. Yep, that's the one I'm talking about. Why don't you share  
13 with us what happened, Kallan?

14 A. Well, I was in training still. I believe it was a Sunday.  
03:43 15 I think it was mid afternoon sometime. We decided to go  
16 bowling with another friend. And, so, we went and we went  
17 bowling and we were drinking alcohol. And I believe we stayed  
18 a little longer than planned.

19 And after bowling, we sat at the bar and I had  
03:44 20 some shots and we drank some more alcohol and beer. And I felt  
21 that it was time to leave, and I felt that we had too much to  
22 drink. And Jamie didn't quite feel like it was -- she was  
23 ready to go. And, so, we're kind of walking out to the car;  
24 and she changes her mind.

03:44 25 And I kind of try -- I grab her by the right arm

03:44 1 and I'm -- by the time I grab her by the right arm, we're  
2 probably 10 feet from the car. It's parked right in front of  
3 the bowling alley.

03:44 4 So, I kind of get her right next to the car and I  
5 pull her around with my right arm and I kind of -- I guess hit  
6 her in the cheek with my left hand, trying to push her head  
7 toward the car. And I got her door open; and I was trying to  
8 physically put her into the car and, you know, push down on her  
9 chest and stomach. And she, you know, pushed me out of the  
03:45 10 way.

11 And, you know, I realized what I was doing. I  
12 was -- I did have quite a bit to drink. And I'm really, really  
13 sorry that I did it. Nothing ever has happened like that  
14 since, and I'm glad she did stay with me. And I really regret  
03:45 15 what happened but it happened and I've just got to promise that  
16 it won't ever happen again. I guess I can't -- words can't  
17 explain how sorry I am of what happened in San Diego.

18 Q. Police were called?

19 A. Yes. I don't think her or I called the police. She kind  
03:45 20 of ran into the bowling alley. She was really upset, as you  
21 can imagine. And I had followed her into the bowling alley  
22 through the front door. And she was -- already had two people  
23 talking to her and someone else came up and interfered me and  
24 said, "You're going to sit over here. We've already called the  
03:46 25 police."

03:46 1 In short, like within minutes, the police were  
2 there. And I was immediately taken to the police station  
3 there. And, I mean, that night the last time I saw her was  
4 right next to the car where we had our dispute.

03:46 5 Q. There's been -- I thought I read somewhere that someone  
6 said there might have been a baseball bat or a bat used. Do  
7 you --

8 A. The following week they had done an investigation, and the  
9 investigator came and asked me about it. And apparently one of  
03:46 10 the witnesses said I was using a baseball bat, which was  
11 incorrect. And the investigator told me that a witness had  
12 seen me with a baseball bat and asked me if I had a baseball  
13 bat. And I did not and hadn't owned one since I'd been in  
14 San Diego.

03:46 15 Q. Did Jamie -- do you know if Jamie initially reported that  
16 you hit her?

17 A. I don't know. I wasn't with her. Like I said, I was  
18 immediately separated from her.

19 Q. Do you know if she later said that you didn't hit her?

03:47 20 A. She did say that I didn't hit her, after the fact, because  
21 I believe that she is really scared to be alone, because not  
22 only was I her support system but we were having -- being  
23 followed by KBR and Halliburton due to the case we're involved  
24 in and she's really scared to be alone. And also, San Diego is  
03:47 25 a rough area. The police were on strike. It was pretty much

03:47 1 lawless at the time.

2 And after the fact, we had people that had tried  
3 to break into our house and we had a medical dog that had  
4 protected my wife. I was at work. I was on night shift. And  
03:47 5 the only reason the perpetrator didn't get into -- and my --  
6 and my wife actually saw the person trying to break because of  
7 the medical dog. And it was in a no dog part of town. You  
8 weren't allowed to have dogs there. One of the reasons we did  
9 was because of the medical dog.

03:48 10 Q. How long were you kept apart from Jamie?

11 A. I think it was just over a week. As protocol, the military  
12 put a retaining order both ways. She wasn't allowed to contact  
13 me; I wasn't allowed to contact her.

14 I wasn't put in jail or anything. I was put to  
03:48 15 restricted barracks over on a different base; and I had  
16 collateral duties to do, like basically swabbing the deck and  
17 cleaning dishes and just stuff I wouldn't normally be doing  
18 with my profession in the navy.

19 Q. I think I heard you say, Kallen, that you were in the navy  
03:48 20 from 2006 to 2009?

21 A. Correct.

22 Q. How were you -- what was your status of discharge?

23 A. I was honorable discharge under reasons of hardship. The  
24 navy wanted to deploy me. And I was Jamie's support system,  
03:49 25 and I filed -- I actually have the paperwork here, the actual

03:49 1 application I filed and my DD 214. And I filed a hardship  
2 discharge because Jamie needed me there for her, with her  
3 condition, to be her support system and take care of her. So,  
4 they agreed to my application and honorably discharged me from  
03:49 5 the navy.

6 Q. How long -- were you told how long you would be away from  
7 Jamie if you had been deployed?

8 A. Normally the deployment time is ten months on an aircraft  
9 carrier, small boats, the little battle ships, go for shorter  
03:49 10 periods of time. And constantly they run over the ten months.  
11 It's not always exact ten months, but it's usually a minimum of  
12 ten months to be gone.

13 Q. You and Jamie, after you were discharged honorably from the  
14 navy, moved back to Houston?

03:49 15 A. Correct.

16 Q. And started a family. I know started it really in  
17 San Diego but --

18 A. Continued to have the family grow.

19 Q. Yes. So, how many children do you have?

03:50 20 A. We have two. I have a -- my older daughter, Anabelle, who  
21 is going on almost 3 now -- in a few months she'll be 3; and my  
22 youngest daughter, Abigail -- I'm kind of outnumbered with all  
23 the girls -- she's four months old. And they're the greatest  
24 thing in the world that's ever happened to me.

03:50 25 Q. That's the second time you've said that, Kallan. I know --

03:50 1 well, how do you spend your days now mostly?

2 A. I'm -- during the day I'm a stay-at-home dad, and I go to  
3 college at night. I've been in college ever since I've been  
4 out of the navy. I was studying to be an environmental  
03:50 5 wildlife biologist, major or minor, one or the other. And I  
6 want to be a scientist; and I love working with animals and  
7 doing what you call ecological studies, like studying  
8 populations of animals and stuff like that.

9 Q. Jamie's worked at a couple of places since she's been back  
03:51 10 in Houston. And did you do anything to help get her -- as far  
11 as get her comfortable going to those jobs?

12 A. Yes. Any type of job interview she had, I took her to.  
13 And I'd pretty much either sit right outside the room or I  
14 would be in the parking lot, in the car, just right outside  
03:51 15 where she was being interviewed. And I think that her most  
16 recent job, I even went to the first one or two days to work  
17 with her and sat out in the parking lot and waited on her.

18 Q. You haven't been in this courtroom. Has that been a good  
19 thing for you, not to hear the details of what's gone on with  
03:51 20 your wife?

21 A. I believe it's been good and bad. I want to be able to  
22 help my wife, you know, and get -- I can't really help her when  
23 she comes into the room, crying, and I want to comfort her and  
24 I can't tell her it's okay because of whatever, because I don't  
03:52 25 know what happened to make her cry.



03:52 1 And I think it's been good also that I haven't  
2 heard some of the details that I've purposely kept myself from.

3 MR. ESTEFAN: I'll pass the witness, your Honor.

4 THE COURT: Okay. Who wishes to inquire?

03:52 5 MS. CATES: I'll start.

6 THE COURT: Okay.

7 MS. CATES: Just one second.

8 **CROSS-EXAMINATION**

9 BY MS. CATES:

03:52 10 Q. Hi, Mr. Daigle.

11 A. Hi.

12 Q. I'm Susan Cates, and I think we met at your deposition a  
13 few months ago.

14 A. Yes, we did.

03:52 15 Q. I'm going to start with some background questions, and then  
16 I'll probably have to jump around a bit.

17 A. That's fine.

18 Q. Ms. Jones worked at an elementary school in Kingwood. Is  
19 that correct?

03:52 20 A. She was a Christian school teacher.

21 Q. And she taught at the school in Kingwood from August of  
22 2010 to December of 2010?

23 A. I don't know dates. I'm really bad on dates. I'm sorry.

24 Q. About a year and a half?

03:53 25 A. Sounds about right.

03:53 1 Q. Was that pretty much a full-time job?

2 A. Yes. Actually, she did have a lot of off periods, like I  
3 think she had a long lunch, sometimes to the point where she  
4 was able to come home for lunch or I would join her with our  
03:53 5 daughter for lunch.

6 Q. But generally she taught the full school day?

7 A. Pretty much, I believe so, yes.

8 Q. Do you know how much she made at the Kingwood school?

9 A. No, I don't, not at all.

03:53 10 Q. Can you ballpark?

11 A. I really can't remember. I don't handle a lot of the  
12 finances at home.

13 Q. Does Ms. Jones handle the family finances?

14 A. I think we handle them together. I think as -- as far as  
03:53 15 numbers go, she's more in detail with the numbers because she's  
16 got the computer to, I guess, spreadsheet it. And I'll just  
17 help her, "Hey, did you remember to pay this bill?" I kind of  
18 do monthly reminders. So --

19 Q. You've touched on this a little bit. But in January of  
03:54 20 2011, Ms. Jones began teaching at the University of Houston?

21 A. Correct.

22 Q. And I believe in your deposition you stated that she took  
23 that job because it was less hours and because it was more  
24 prestigious. Is that right?

03:54 25 A. Yes.

03:54 1 Q. And this past semester she taught three classes. Is that  
2 right?

3 A. I'm not sure of the number of classes. I know she taught  
4 three days of the week.

03:54 5 Q. And does she teach at the Louetta campus?

6 A. I believe so, yes.

7 Q. That's about 42 miles from your house?

8 A. Yes.

9 Q. And does she drive there by herself?

03:54 10 A. Yes. She didn't at first. She did a -- had to do a tour  
11 of the campus first to learn where her class was, and I went  
12 with her up there to do that and --

13 Q. After the tour that you went on with her at the University  
14 of Houston campus -- and I think you said that you went up  
03:54 15 there a couple of additional days to make sure that she was  
16 okay.

17                   Aside from those three times, has she been able  
18 to drive herself, to teach her classes, by herself?

19 A. Yes.

03:55 20 Q. And she goes onto the campus by herself and into the  
21 classroom by herself?

22 A. Yes.

23 Q. And she's been able to teach her classes all semester?

24 A. Yes.

03:55 25 Q. Do you know how much money she's making at the University

03:55 1 of Houston?

2 A. No, I don't.

3 Q. And, again, that wouldn't be something you would be able to  
4 ballpark?

03:55 5 A. I would rather not. I don't know the exact number; so, I  
6 would rather not try and guess.

7 Q. Fair enough.

8 You first met Ms. Jones, I believe, in late  
9 summer, 2005?

03:55 10 A. What I mean by "late summer," it was still warm outside.  
11 So, to me it was considered late summer, in my mind. And, like  
12 I said, there's only summer and winter in Texas pretty much,  
13 for me.

14 MS. CATES: Let's go ahead and put that up here, if we  
03:55 15 could.

16 BY MS. CATES:

17 Q. Could we say August, late summer?

18 A. Honestly, it stays warm a little later than August. So, to  
19 me, August would be more mid summer because it's really hot  
03:56 20 then still.

21 Q. We can leave it late summer.

22 A. Okay. And I'm not saying that it wasn't August. I just --  
23 I can't remember dates. I don't know either way.

24 Q. So, could have been August, it could have been September,  
03:56 25 but that general time frame?

03:56 1 A. I mean, it -- depending on that year and how long it stayed  
2 warm, it could be as -- I think it stays warm as late as -- I  
3 don't know, December sometimes in Texas, October.

03:57 4 Q. The first several times that you tried to meet Ms. Jones,  
5 what happened?

6 A. She really did not want to meet me. She -- I think I tried  
7 twice before I was actually able to meet her, and she was very  
8 abrasive and not very cordial at all and pretty much had  
9 nothing to do with me.

03:57 10 Q. Did she curse at you?

11 A. I believe she did on -- on maybe the second occasion,  
12 because I didn't get the point the first occasion.

13 Q. What did she call you?

03:57 14 A. I don't recall exactly what her words were, but -- I don't  
15 recall exactly the words.

16 Q. Did she flip you off?

17 A. I think she might have, the second occasion.

18 Q. Will it refresh your memory to look at some of your  
19 deposition testimony?

03:58 20 A. (No response.)

21 MS. CATES: I'm sorry, your Honor, may I approach the  
22 witness?

23 THE COURT: You may, yes.

24 MS. CATES: Sorry.

03:58 25 BY MS. CATES:

03:58 1 Q. If you want, we can just read this question and answer  
2 maybe.

3 A. Which one?

4 Q. Starting right -- let me see.

03:58 5 MS. CATES: Todd or Ron, we'll be at 64, Line 10.

6 BY MS. CATES:

7 Q. Right here. So -- okay. This is -- I'll read the question  
8 if you read the answer.

9 "You said that she cussed you out. She did this  
03:58 10 repeatedly?"

11 A. "ANSWER: I tried repeatedly to get her attention."

12 Q. "And she cussed you out repeatedly?"

13 A. "Every time she wouldn't give me the time of day."

14 Q. "What did she say? And I need for you to tell me, as best  
03:59 15 as you can recall, the exact words she said."

16 A. "A lot of it was non-verbal, like the middle finger. And  
17 every time I would see her when I first saw her, she would be  
18 walking usually with her mom. And I think there was only one  
19 instance where I drove by. And I think when I met her, I was  
03:59 20 trying to pick her up. She would" --

21 That doesn't really make sense.

22 "I would say, 'Hello. What are you doing,' you  
23 know. I would stop my truck, roll down the window, 'Hey, what  
24 are you doing? My name is Kallan. You want to hang out  
03:59 25 sometime?' And she would flip me off and she said, 'What does

03:59 1 it look like I'm doing? I'm walking here.' And she might have  
2 called me a bad name at the time."  
3 Q. "Okay. What kind of bad name?"  
4 A. "Like, 'you stupid dick' or 'you stupid asshole.'"  
04:00 5 Q. "Is that how you recall your first few meetings with  
6 Ms. Jones?"  
7 A. "Sounds about right."  
8 Q. "After she treated you like that, why did you keep trying  
9 to meet up with her, date her, talk with her?"  
04:00 10 A. "I was very attracted to her. And" --  
11 Q. "You didn't just want to be her friend; you wanted to date  
12 her. Is that right?"  
13 A. "Correct. I thought she was the one. Obviously, she was."  
14 Q. "From seeing her and having her curse you out?"  
04:00 15 A. "I don't think it fazed me at all."  
16 Q. Before you met Ms. Jones or -- did you tell her mother that  
17 you just wanted to be friends with Jamie?  
18 A. I don't remember what I told her mother. I think -- I  
19 think it was something like that. I wanted to show her that I  
04:00 20 was a nice guy or something along those lines.  
21 Q. And after one of those occasions, Ms. Jones called you. Is  
22 that correct?  
23 A. Correct.  
24 Q. Ms. Jones' mother testified today that you walked them home  
04:01 25 from a barbecue or some type of apartment complex event. Is

04:01 1 that the first time you talked to Ms. Jones, aside from the  
2 cursing and --

3 THE COURT: Why don't you specify which Ms. Jones  
4 you're referring to? Okay?

04:01 5 BY MS. CATES:

6 Q. Jamie -- is that okay if I refer to her as "Jamie"?

7 A. Correct.

8 Q. Jamie's mom testified that the first time that you talked  
9 with Jamie was when you-all were -- you had walked them home  
10 from an apartment complex barbecue or event?

11 A. Right. That was the first time I had ever actually had any  
12 type of real conversation with her.

13 Q. Have you testified before in this case that the first time  
14 you talked with her was on the phone?

04:01 15 A. Well, she called me the day after, on the phone. And, I  
16 mean, yeah, I did testify to that; but I wasn't thinking about  
17 the walk home, because that wasn't really just her. The first  
18 time I really talked to just her was on the phone.

19 Her mother was right there with us. I was  
04:02 20 talking with them together.

21 Q. Is it your belief that Jamie's mom made her call you?

22 A. Yes, I believe so.

23 Q. Is it your belief that she was standing right there when  
24 Jamie called you?

04:02 25 A. I don't know if she was standing right there, but I do



04:02 1 believe she was the one that made her call me.

2 Q. And on this phone call late summer, 2005, did you ask Jamie  
3 if she would go out with you?

4 A. Yes, I believe so. It was really early in the morning, and  
04:02 5 I wasn't ready to be up that early. It was during my off time  
6 from working offshore. I like to get my sleep in.

7 Q. But you did ask her to go on a date?

8 A. I think it was to lunch.

9 Q. Yes. And she said yes?

04:02 10 A. Yes.

11 Q. And you believe that her mom made Jamie say yes?

12 A. I don't know if her mom made Jamie say yes. I know her mom  
13 made her call me. I believe so. I don't know if Jamie on her  
14 own will -- said yes or if her mom was encouraging her to.

04:03 15 Q. You didn't know Jamie's mother before you met Jamie, did  
16 you?

17 A. No.

18 Q. So, why do you think, if Jamie had just gotten back from  
19 Iraq, she was so insistent on Jamie dating you, when she didn't  
04:03 20 know you?

21 A. I'm not sure she was insistent on Jamie dating me. I think  
22 that she just saw, from me walking them home and the short  
23 conversation I had with them there, that I was a nice guy and  
24 felt that I was probably safe for Jamie to be friends with me.

04:03 25 Q. After that phone call, did you go on your first date with

04:03

1 Jamie soon after that?

2 A. It was lunch that day.

3 Q. That very day?

4 A. That very day.

04:03

5 Q. And you went to The Olive Garden?

6 A. I believe so, yes.

7 Q. And it was just you and Jamie?

8 A. I think so, yes.

9 Q. And you spent about two hours alone together at lunch?

04:04

10 A. Yeah. Her mom might have gone with us. I don't remember  
11 exactly. I was pretty much excited that I was getting to have  
12 lunch with the girl of my dreams.

13 Q. We can go back to your deposition testimony.

14 MS. CATES: May I approach, your Honor?

04:04

15 THE COURT: Yes, you may.

16 MS. CATES: Ron, we're at Page 71, Line 6.

17 MR. ESTEFAN: Thank you.

18 BY MS. CATES:

04:04

19 Q. Sorry, Mr. Daigle. But if you'll do the same thing, I'll  
20 read the question and you'll read the answer. And we'll start  
21 right here.

22 "All right. And it was you and Jamie and Jamie's  
23 mother that went to the Olive Garden?"

24 A. "It was me and Jamie."

04:04

25 Q. "Oh, it was just you and Jamie that went to the

04:04

1 Olive Garden?"

2 A. "And then we picked up her mom after."

3 Q. Thank you.

4 A. So, yeah, it was just me and Jamie, like I said, initially.

04:05

5 Q. And, then, like your testimony here read, you picked up her  
6 mother?

7 A. Correct.

8 Q. And you-all went to your parents' house?

9 A. Correct.

04:05

10 Q. And you stayed there for about four hours?

11 A. I don't know the exact time, but it was probably something  
12 like that.

13 Q. So, on your first date, you spent at least six to seven  
14 hours with Jamie?

04:05

15 A. Correct, two of which were alone.

16 Q. And then I think you went offshore, you testified, maybe  
17 four days, a week or so later?

18 A. Two to four days later, somewhere around there. I don't  
19 think it was a full week.

04:05

20 Q. And every day, from the day of the first date at the  
21 Olive Garden till the day you went offshore, you spent with  
22 Jamie Jones?

23 A. I don't recollect if it was every day; but we spent  
24 multiple days together, I believe.

04:05

25 Q. Multiple days out of --

04:05

1 A. Out of --

2 Q. -- two to four days?

3 A. -- two to four.

4 Q. Okay. And you hung out by the pool during that time?

04:06

5 A. I think it might have been that time or it could have been  
6 the time I came back next time from offshore. I don't remember  
7 exactly.

8 Q. And you went to lunch, just different dating activities?

9 A. Correct, normal -- lunch, movies, stuff like that.

04:06

10 Q. Normal dates. And, on occasion, her mom was there; but  
11 sometimes she wasn't?12 A. No. I think most of the time her mom was there. And I  
13 think maybe towards -- I don't know. The more she was more  
14 comfortable with me, the less her mom would come with us.

04:06

15 Q. But she wasn't on every single date with you --

16 A. No.

17 Q. -- even at the beginning?

18 A. No, not right from the beginning, no. Obviously, I stated  
19 that we were at the Olive Garden together alone. So -- but she  
20 went on most of our dates together in the beginning.

04:06

21 Q. But not all of them. That's my only point, not all of  
22 them.

23 A. More with than without.

24 Q. And once you got back from working offshore for -- I think  
25 you said you worked offshore for two weeks at a time, usually?

04:06

04:06 1 A. Usually two weeks. A lot of times I'd stay three, but it's  
2 normally two weeks.

3 Q. So, after the first time you went offshore -- or when you  
4 were offshore, actually, did you call Ms. Jones?

04:07 5 A. Every chance I got.

6 Q. Was she happy to talk with you?

7 A. Yes, I believe so.

8 Q. When you got back from being offshore that two to three  
9 weeks, did you continue dating Ms. Jones?

04:07 10 A. Yes.

11 Q. And did you see her almost daily when you were not  
12 offshore?

13 A. Yes. I think in the beginning, you know, it wasn't every  
14 single day for the two weeks off; but it was most of the days  
04:07 15 and, obviously, more and more. And we eventually got married  
16 and --

17 Q. When did you start talking about getting married with  
18 Jamie?

19 A. I don't remember the exact date. It kind of came up in  
04:07 20 casual conversation over time. So --

21 Q. When did you propose?

22 A. I think it was six months or seven months after I met her,  
23 somewhere around there. I know it wasn't sooner than six  
24 months, because that was kind of a guideline for me that I had  
04:08 25 set for myself.

04:08 1 Q. Could we say about February, 2006? Or maybe would you be  
2 more comfortable saying spring 2006?

3 Actually, I'm sorry. That would be fall.

4 A. February would be spring?

04:08 5 Q. Spring. Sorry.

6 A. I think I would be more comfortable with, like, the  
7 beginning of summer.

8 Q. The beginning of summer 2006?

9 A. Maybe mid summer.

04:08 10 Q. We can just say summer, 2006, if that works.

11 A. That's fine.

12 Q. Looking at this timeline, in your deposition you testified  
13 that you think you started talking about getting married about  
14 six months after your first date. So, would that be true,  
04:09 15 somewhere between the two summers, winter of '06, you started  
16 talking about getting engaged? Sorry. Winter of '05.

17 A. No. Talking about it toward -- I didn't wait too long  
18 after we started talking about it. So, it was probably about  
19 six months --

04:09 20 Q. Okay.

21 A. -- probably more like five months we started talking about  
22 it and I asked her to marry me at, like, six months after we  
23 starting dating.

24 Q. Then you got married in September of 2006?

04:09 25 A. Correct, right before I joined -- right before I left for

04:09

1 the military.

2 MS. CATES: We should go ahead and put that up here.

3 THE COURT: Right before you left the military, you  
4 say?

04:09

5 THE WITNESS: Left for the military.

6 THE COURT: Left for the military. Okay.

7 BY MS. CATES:

8 Q. Would you characterize your marriage as stable?

9 A. Yes.

04:10

10 Q. You're in college now, right?

11 A. Correct.

12 Q. And you generally take seven hours a semester?

13 A. Correct.

14 Q. And I am jumping around a little bit here.

04:10

15 But when you joined the navy, you already -- you  
16 were already actually married to Jamie, correct?

17 A. Correct.

18 Q. So, you knew it was a possibility that you would have to go  
19 overseas?

04:10

20 A. Yes.

21 Q. But then, when it came time, you decided that you needed to  
22 stay with Jamie?

23 A. Correct. I had felt that, I think, with time, I believed  
24 she would heal. But it didn't work out that way.

04:11

25 Q. Have you talked with the attorneys here in this courtroom

04:11 1 about your testimony today?

2 A. Yes.

3 Q. Have they asked you to say anything specific?

4 A. No. They told me guidelines on things that the judge has  
04:11 5 ruled on, on what I'm not supposed to touch on. And that's  
6 pretty much --

7 Q. Dr. Ciaravino is the doctor that did the reconstruction  
8 surgery for Jamie. Is that right?

9 A. Yes.

04:11 10 Q. And I'm probably saying his name wrong. I apologize.

11 Did you accompany Ms. Jones to those doctor's  
12 appointments?

13 A. Yes, I did.

14 Q. And did you hear Ms. Jones complain to Dr. Ciaravino that  
04:11 15 she was not happy with the results of the surgery?

16 A. After the surgery?

17 Q. Yes.

18 A. I don't recall exactly. I don't know if I went to the  
19 follow-up appointment with her or not. I know I went to the  
04:12 20 beginning appointments. And I know that immediately after  
21 removing the bandages, she was disappointed in the results  
22 still. And I was there for the removing of the bandages,  
23 because I helped her with them.

24 Q. Okay. I'm going to show you another page of your  
04:12 25 deposition.



04:12 1 A. Yes.

2 MS. CATES: We are at 172, 5 through 11.

3 MR. ESTEFAN: Thank you.

4 BY MS. CATES:

04:12 5 Q. This part right here that's red, "Did she complain to  
6 Dr. Ciaravino?"

7 A. "Yes. And I believe, I think, she had a post-op that she  
8 had to go, like, a ways back and he described to her that -- to  
9 her that, you know, she still needed another reconstructive  
04:12 10 surgery. I believe he told her at the time she did and -- and  
11 then" --

12 Q. Sure. Would it surprise you if Dr. Ciaravino testified in  
13 this courtroom that Ms. Jones never complained about her  
14 breasts after the surgery?

04:13 15 A. Yes, that would surprise me.

16 Q. Have you talked or Ms. Jones or together talked with  
17 Dr. Ciaravino in the last year about doing another surgery?

18 A. I've really never kept in contact with Dr. Ciaravino and  
19 I -- Jamie did most of the corresponding with him.

04:13 20 Q. Ms. Jones has written a manuscript about her employment  
21 with KBR and the alleged assault in Iraq, correct?

22 A. Correct. I don't think she was the only one that wrote in  
23 it. So --

24 Q. Leading me right into my next question. You wrote part of  
04:13 25 that manuscript, as well?

04:13 1 A. I helped with the manuscript, yes.

2 Q. And Breanna Morgan, or Cindy Jones, Jamie Jones' mother,  
3 also wrote portions of that manuscript?

4 A. I believe she also helped her, yes.

04:14 5 Q. And, in fact, you also rephrased part of the book that  
6 Jamie Jones wrote?

7 A. Yes, I helped with the -- I helped her many times with the  
8 phrasing of it.

9 Q. Did you add facts to the book?

04:14 10 A. I don't think the book is a compilation of facts. I think  
11 it's just a manuscript.

12 Q. But you added to the book?

13 A. Yes, I added to the book. I definitely wrote things in the  
14 book.

04:14 15 Q. And you don't know Jamie Jones' entire story. You  
16 testified that you don't want to know all of her story about  
17 what happened in Iraq?

18 A. Correct.

19 Q. But yet you've included facts about Jamie's story in the  
04:14 20 book?

21 A. I've helped with the book, yes.

22 THE COURT: Does the manuscript use her true name?

23 THE WITNESS: I'm not sure. I've never sat down  
24 and -- the most I ever read the manuscript was when I was  
04:14 25 forced to in my depo.

04:15 1 THE COURT: But you're helping with the book, you  
2 don't even know what the protagonist's name is?

3 THE WITNESS: Correct.

4 BY MS. CATES:

04:15 5 Q. Are you aware that the book is called "Deserted, the Jamie  
6 Jones Story"?

7 A. Yes.

8 Q. Okay.

9 A. But I was also aware that they -- that she and her mother  
04:15 10 and I had agreed to change a lot of names. So, I didn't want  
11 to testify if she hadn't and I didn't know about it and --

12 Q. Basically what you did is you embellished some of  
13 Ms. Jones' book to make it more readable for the reader?

14 A. Yeah, I wanted it to flow well.

04:15 15 Q. You wanted to make it interesting?

16 A. Correct.

17 Q. Because you wanted to sell it?

18 A. I don't think my intention was to sell it. I wanted to  
19 make it interesting if it ever did come down to that.

04:15 20 Q. Well, when you said that you embellished some of her book  
21 to make it more readable for the reader, who was the reader?  
22 Just you and Breanna?

23 A. Like I said, I believe I was doing it just in case  
24 someone -- in case that was something we actually intended on  
04:16 25 doing in the future.

04:16 1 Q. And you've taken steps to try to get a book deal for the  
2 manuscript?

3 A. I have tried to get a book deal for her story, not the  
4 manuscript exactly.

04:16 5 Q. And you negotiated with authors to write books and  
6 screenplays about Ms. Jones' story and her employment with KBR.

7 A. I have had -- I have talked to a lot of authors and other  
8 people in referencing Jamie's story.

9 Q. And you've exchanged e-mails with an agent for Paul Brown,  
04:16 10 who is an author who has expressed an interest in writing a  
11 book about Ms. Jones?

12 A. Right. That was a long time ago, yes.

13 Q. Was that agent Craig Wiley?

14 A. I don't remember. He was a hard guy to get hold of; so, we  
04:16 15 didn't do much correspondence.

16 Q. And Jamie Jones also has had a producer?

17 A. Correct.

18 Q. Back to the manuscript, was that manuscript written in  
19 2007?

04:17 20 A. I don't think it was all written at once. I think it was  
21 written over a number of years. I don't -- I don't even know  
22 when it was started. I don't even think it's ever been  
23 finished. So --

24 Q. When is the last time you worked on the book?

04:17 25 A. I don't remember exactly. Probably over a year.

04:17 1 Q. And when you've been drafting the book and embellishing on  
2 the book, you've added facts, whether they were really true or  
3 not?

04:17 4 A. I've added certain parts that I thought would help the  
5 story flow better.

6 Q. Can you recall, just as you sit here today, any specific  
7 scene or chapter that you drafted in the book?

8 A. Not exactly, no.

9 THE COURT: How about just generally?

04:17 10 THE WITNESS: I generally helped her with, like,  
11 descriptive terms. Like, I remember one part, she was talking  
12 about working with her dad on some computers; and she asked me,  
13 if I was working with my dad on something -- my dad and I like  
14 to work on old cars -- but how would I describe it.

04:18 15 And that's more or less the type of advice I  
16 would give her.

17 BY MS. CATES:

18 Q. I'm going to read you just a couple of lines from the book  
19 and see if you recall if you wrote these or not. This is in  
04:18 20 the chapter called "Trip Home."

21 "I was told to put on my flak jacket and  
22 bulletproof helmet for it could possibly be a dangerous ride.  
23 We were to fly right over an extremely hostile location. The  
24 helicopter was so tiny that it didn't even really have a chair  
04:18 25 to sit in; so, the pilot hooked a belay to my flak jacket to

04:18 1 make sure I didn't fall out."

2 Did you contribute to this section?

3 A. I don't believe I did, no.

4 Q. That was probably Jamie?

04:18 5 A. I'm not sure exactly. I couldn't tell you because I didn't  
6 sit there and watch what other people helped her with in the  
7 book or not.

8 In reference by "other people," I mean her  
9 mother.

04:18 10 Q. And Ms. Jones signed a contract with Paul Brown to write a  
11 book about her?

12 And we're off this manuscript, back to books in  
13 general.

14 A. No, he didn't, not to write a book.

04:19 15 Q. What was the contract with Paul Brown for?

16 A. I think he was a producer, and he was going to try and  
17 promote the story to people that might be interested in funding  
18 it for a movie.

19 Q. Have you communicated with Paul Pompian regarding a book  
04:19 20 deal for Jamie?

21 A. Oh, wait a minute. Was that Paul Brown you mentioned?

22 Q. Yes.

23 A. I'm sorry. He was the guy that I was helping with -- I was  
24 trying to get to help with getting a book.

04:19 25 Q. Okay. Then, maybe it was Paul Pompian, the guy you were

04:19 1 trying to get --

2 A. Yes. I'm sorry, too many Pauls.

3 Q. That's okay. It's a lot of deals going on.

4 And Jennifer Abrahamson, in 2010 she started  
04:20 5 writing a book about Ms. Jones. Is that correct?

6 A. No. I haven't really had much correspondence with her.

7 Jamie has pretty much had all the correspondence with her.

8 Q. And a contract was exchanged for what Jennifer Abrahamson  
9 has titled "Jamie Leigh Jones Memoir Project." Have you seen  
04:20 10 that contract?

11 A. I think she was discussing a contract, but I don't -- we  
12 don't have a contract currently with anybody.

13 Q. Well, the proposed contract was to split all the proceeds  
14 or royalties 50-50. Are you aware of that?

04:20 15 A. No. I didn't see any details on the proposed contract.

16 Q. In connection with the deals that you were discussing with  
17 Paul Pompian, did you-all get a 1,000-dollar advance?

18 A. We did not get a 1,000-dollar advance, no, I don't believe  
19 so.

04:20 20 Q. If Jamie testified differently to that, is it possible that  
21 she is aware of something that you just didn't know about?

22 A. I think it was to renew the contract. I think that's just  
23 a base rate, because the contract had expired and the previous  
24 contract stated that if he needed to renew the contract that  
04:21 25 was what would be required of him.

04:21 1 Q. Okay. Do you know Patricia Meyer -- or Patty Meyer?

2 A. Yes. I don't know her personally, I guess.

3 Q. She's the one that -- or at least one of the people that's  
4 drafting a screenplay about Ms. Jones' story?

04:21 5 A. I don't know if she's, like, actively drafting one or not.  
6 As far as I know, we're not under contracts with anyone right  
7 now.

8 Q. This is switching topics again.

9 In early December of 2007, you called the  
04:21 10 military police and requested an escort for yourself and Jamie  
11 Jones to go to your residence in San Diego. Is that right?

12 A. Correct.

13 Q. And you asked military police to escort you and your wife  
14 home so you could pick up personal belongings before departing  
04:22 15 to a safe house?

16 A. Correct.

17 Q. And before you did this, you went and got leave from the  
18 military?

19 A. Correct.

04:22 20 Q. And you told the military police that your wife was  
21 involved in a high profile case. Is that correct?

22 A. Yes.

23 Q. And that there had been three suspicious deaths within a  
24 24-hour time period. Is that right?

04:22 25 A. I don't know if the 24-hour time period; but there's three



0 4 : 2 2 1 suspicious deaths really close together, yes.

2 Q. Do you know the names of those three deaths, the people  
3 that died?

4 A. I don't remember their names exactly. I think one of them  
0 4 : 2 2 5 was working with a friend of ours, was the -- Tom. And it was  
6 his friend that was helping him with something to do with our  
7 movie. And this was a long time ago; so, I really don't  
8 remember what the other two were.

9 Q. So, the military police contacted the San Diego Police. Is  
0 4 : 2 2 10 that right?

11 A. That's correct.

12 Q. And the San Diego Police escorted you to your house?

13 A. Correct.

14 Q. And you and Jamie picked up your personal belongings. You  
0 4 : 2 3 15 were fearing that your lives were somehow in danger because of  
16 the publicity of this case?

17 A. Not because of the publicity, no. We felt our lives were  
18 in danger for other reasons.

19 Q. What reasons?

0 4 : 2 3 20 A. There were multiple things. Our lawyer had received a  
21 threat by phone call and those three deaths that were -- I  
22 don't know if we followed up with the cause of deaths; but  
23 those, compiled with the threat that we received towards Jamie  
24 at our lawyer, we felt our lives were in danger. And I would  
0 4 : 2 3 25 do anything to protect my family.

04:23 1 Q. So, after the San Diego Police were at your house and you  
2 got your personal belongings with your wife, did the San Diego  
3 Police follow you to the safe house?

4 A. No.

04:24 5 Q. Where was the safe house?

6 A. It was --

7 Q. But the "safe house" is your term, is it not?

8 A. Yes. It's a safe place that -- a place that we would be  
9 more safe, around more people that we --

04:24 10 Q. Well, did the military police or the San Diego Police set  
11 up a safe house for you to go to, since you were fearing for  
12 your lives?

13 A. No. They trusted that I knew a safe place to take me and  
14 my wife.

04:24 15 Q. Where was the safe house?

16 A. It was in Texas.

17 Q. Where in Texas?

18 A. My parents' house.

19 Q. So, you felt you would just be safer with your parents than  
04:24 20 just the two of you in San Diego?

21 A. Very much so, yes.

22 Q. Did your parents feel safe with that option?

23 A. I'm not sure. You're going to have to ask them.

24 Q. When you left -- I think you stated that you stayed in  
04:24 25 Texas for about a week, close to a week and then you had to go

04:24

1 back to San Diego?

2 A. I don't know the time frame exactly.

3 Q. You did eventually go back to San Diego?

4 A. Yes.

04:25

5 Q. And did you go right back to the residence that you were  
6 living in before you went to the safe house, or your parents'  
7 house?

8 A. Yes.

9 Q. Did the San Diego or military police set up anything --

04:25

10 extra protection at your residence in San Diego?

11 A. No.

12 Q. So, it was sort of like just going on vacation in Texas,  
13 getting back to San Diego, and resuming life as normal?

14 A. Not really.

04:25

15 Q. Well, you moved into the same house?

16 A. We didn't --

17 Q. Well, not moved. Sorry. You went back to the same house  
18 you were living in.

19 A. We felt we were safer once we came back, due to certain  
20 other circumstances.

04:25

21 THE COURT: Well, who do you think was causing all  
22 this fear or these deaths? Who was behind that?

23 THE WITNESS: I'm not sure exactly, but the -- the  
24 time frame in which they happened and the people that -- I  
25 believe all three were people closely involved with us, who

04:25

04:26 1 were -- or others who had a similar case like Jamie's with the  
2 same company. And then the threat that was directed directly  
3 at Jamie through her lawyer, called -- the person called the  
4 lawyer and made the threat to him towards Jamie.

04:26 5 BY MS. CATES:

6 Q. So, the information that you were basing the need to go to  
7 a safe house on was all from Todd Kelly?

8 A. Not all of it, no. I didn't want to take any risk  
9 whatsoever. I felt that we were threatened, and I felt that we  
04:26 10 needed to be as safe as possible. I didn't want anything to  
11 happen to me or my wife.

12 Q. But you felt safe enough to go back about a week later?

13 A. Yes.

14 MS. CATES: No further questions. Thank you.

04:26 15 THE COURT: Anything further from this witness?

16 MR. McKINNEY: I have a few questions.

17 THE COURT: Okay.

18 **CROSS-EXAMINATION**

19 BY MR. McKINNEY:

04:27 20 Q. I'm Andrew McKinney. I represent Charles Bortz. Good  
21 afternoon.

22 A. Good afternoon.

23 Q. I don't believe we've met before.

24 A. No, not -- no, we haven't.

04:27 25 Q. Your wife's attorney, Ron Estefan, asked you about an

04:27

1     unfortunate incident in San Diego.

2     A.   Correct.

3     Q.   And I would like to chat with you about that a little bit.

4     And first, if you don't mind, let me understand what you say

04:27

5     happened, if you don't mind.

6     A.   Okay.

7     Q.   Do I understand that you and Ms. Jones, your wife, left the  
8     bowling alley together?

9     A.   We were on our way out.

04:27

10    Q.   And you got to your car --

11    A.   Correct.

12    Q.   -- correct?

13                   And you wanted to leave, and your wife wanted to  
14    stay behind?

04:27

15    A.   Correct.

16    Q.   Now, at the time that you left the bowling alley, were you  
17    leaving in a peaceful and, for all outward appearances, in an  
18    appropriate and mannerly way?

19    A.   Probably not. I believe we started bickering on our way

04:28

20    out, probably even right before we began to leave. And that's  
21    probably one of the reasons I thought it was a good time to  
22    leave.

23    Q.   All right.

24    A.   I can't recall exactly. I had a few drinks and --

04:28

25    Q.   Okay. Sure. And when you got to the car, I guess your

04:28 1 wife wanted to return to the bowling alley and you tried to  
2 force her into the car in one form or fashion?

3 A. She kind of decided that about 10 feet from the car, and I  
4 grabbed her by the arm --

04:28 5 Q. Okay.

6 A. -- with my right hand and just kind of drug her to the side  
7 of the car and --

8 Q. All right. And I'm not -- this is not prurient interest.  
9 This will all link up in a little bit, and I apologize for  
04:29 10 putting you through this.

11 Can you tell me if there was any physical contact  
12 after you placed your right arm -- your right hand on your  
13 wife's arm?

14 A. Yes.

04:29 15 Q. And what was the nature of that physical contact?

16 A. I pulled her around, and I opened the door with my left  
17 hand. I had her with the -- by my right. I pulled her around,  
18 and I was -- she was -- you know, she wasn't cooperating,  
19 obviously not, with a force -- me forcing her around like that.

04:29 20 And I kind of hit her in the face to push her  
21 back toward the side of the door. And then I was pushing  
22 her -- I forcefully pushed her on her stomach and, like, chest  
23 area to get down in the car.

24 And she was able to push me off of her and run  
04:29 25 back inside to the bowling alley.

04:30 1 Q. Now, was there a conversation going on at this time?

2 A. I don't think we were doing very much talking. She was  
3 probably yelling at me and I was probably yelling at her at the  
4 same time that all this was going on.

04:30 5 Q. Okay. All right. Well, are you aware that there were  
6 records made at the time of this event by various law  
7 enforcement and medical personnel there on the base?

8 A. Yes.

9 Q. Have you had a chance to read those records?

04:30 10 A. I think I read one of them. I don't recall exactly whose  
11 report it was.

12 Q. All right. Well, let's chat a little bit about --

13 MR. MCKINNEY: Let's put Bortz 82 and go to Page 879  
14 of Bortz 82.

04:30 15 This is a difficult record to read. I apologize  
16 for that.

17 And let's get the part that's in red. Let's get  
18 that blown up, please, right there.

19 THE WITNESS: Do you have a copy of that for me? I  
04:31 20 can't read it.

21 BY MR. MCKINNEY:

22 Q. We're going to have it blown up for you. It's still very  
23 difficult to read.

24 My copy is fairly clear. Read along with me.

04:31 25 MS. CATES: Andrew, here's a paper copy, if it helps.

0 4 : 3 1 1 MR. MCKINNEY: Is that a better copy?

2 MS. CATES: It's not better but --

3 MR. MCKINNEY: I have a decent copy here. Thank you.

4 BY MR. MCKINNEY:

0 4 : 3 1 5 Q. This is what the witnesses reported to the police who

6 arrived at the scene. Okay?

7 A. The witnesses reported to the police?

8 Q. Yes.

9 A. Okay.

0 4 : 3 1 10 Q. The witnesses -- well, actually, this is the staff at the

11 bowling alley.

12 A. Okay.

13 Q. "The staff told me that both the victim and suspect had

14 been drinking and bowling from about 1500 hours," which would

0 4 : 3 2 15 be about 3:00 o'clock in the afternoon. Is that right?

16 A. That sounds about right, yes.

17 Q. And does that sound -- does that comport with your memory?

18 A. Yes.

19 Q. "Staff told me that when" -- they have you down here as

0 4 : 3 2 20 "AMAN Daigle." They must have misunderstood your first name.

21 A. That's a military rank. AMAN, aviation mechanic.

22 Q. Oh, okay. I'm just going to call it "Kallan Daigle"

23 because it's a little easier to pronounce.

24 A. That's fine.

0 4 : 3 2 25 Q. "Staff told me that when Kallan Daigle made an attempt to



0 4 : 3 2 1 leave the bowling alley, they began to get into a verbal  
2 conflict and" -- focus on what the staff reported to the police  
3 here -- "staff personnel saw the female run out the south door  
4 and the male ran after her, yelling."

0 4 : 3 3 5 Do you recall that?

6 A. It was not the south door.

7 Q. Do you recall your wife running out and you running out  
8 after her, yelling?

9 A. No, that's not the way we went out.

0 4 : 3 3 10 Q. All right. "Then Ms. Daigle" -- "Mrs. Daigle came running  
11 in through the north side door, crying and screaming that  
12 Mr. Daigle had hit her. The staff called the police,"  
13 et cetera.

14 So, you don't agree with the report of the  
0 4 : 3 3 15 bowling alley staff as recorded by the police. Is that  
16 correct?

17 A. Correct.

18 Q. All right.

19 A. To my recollection, there was no south door. There was  
0 4 : 3 3 20 only a north and a west door.

21 THE COURT: But is there any other aspect of that you  
22 disagree with?

23 THE WITNESS: Just the way we left and how it says  
24 that she left the south and came in through the north.

0 4 : 3 4 25 THE COURT: I know. But except for the doors, whether

04:34 1 it's east or west, except for which direction of doors were in,  
2 is that correct?

3 THE WITNESS: No. Also the fact that she went running  
4 out ahead of me and -- and then --

04:34 5 BY MR. McKINNEY:

6 Q. You're saying -- not to interrupt you, but I think you're  
7 telling us that your recollection is the two of you walked out  
8 together, bickering, and she -- you had your altercation in the  
9 parking lot that you had described, and this other description  
10 provided by the bowling alley staff is simply not correct?

11 A. Correct.

12 MR. McKINNEY: Let's go to Bortz 81, please. This one  
13 is going to be legible. And let's highlight in this paragraph  
14 right here, the first four lines, please.

04:35 15 BY MR. McKINNEY:

16 Q. The first line here is --

17 MR. McKINNEY: No. Sorry. That's not it.

18 Next paragraph down, these four lines here, first  
19 four.

04:35 20 BY MR. McKINNEY:

21 Q. This is a report from one of the investigating officers, of  
22 a conversation that, according to this record, he had with you.  
23 And I'll read it.

24 "DA responded to NASNI and spoke with  
04:36 25 S. Daigle" -- and I think "S" stands for "suspect."

04:36 1 A. I think it stands for -- I'm not sure what it stands for.

2 Q. Well, the reason why I'm making that guess is because your  
3 wife is referred to as "V. Daigle," which I would infer means  
4 "victim." Does that make sense to you?

04:36 5 A. Yeah, that would make sense to me.

6 Q. Okay. So, "DA responded to NASNI and spoke with S. Daigle,  
7 who was clearly intoxicated."

8 Do you agree that you were probably clearly  
9 intoxicated?

04:36 10 A. Yes.

11 Q. "S. Daigle indicated he and his wife had been at the  
12 bowling alley, drinking for several hours, and claimed that she  
13 got upset when it was time to leave."

14 Is that an accurate description of what you told  
15 the officer?

16 A. Correct.

17 Q. Then the officer wrote down, "But denied ever striking or  
18 forcefully touching her."

19 Did you deny at the time striking or forcefully  
20 touching your wife?

21 A. Yes.

22 Q. And you're here today, under oath, to tell our jury that  
23 that statement that you made was not true?

24 A. Correct.

04:37 25 Q. Now, were you aware at the time that you made this

04:37 1 statement which you now say is untrue that making -- and you  
2 knew it was untrue at the time, I take it?

3 A. Yes.

04:37 4 Q. Were you aware at the time that you made that statement  
5 which you knew to be untrue, that making an untrue statement to  
6 a police officer, under the Uniform Code of Military Justice,  
7 is itself an offense under the Uniform Code of Military  
8 Justice?

9 A. Correct.

04:38 10 Q. So, you knew that you were committing an offense, breaking  
11 the law?

12 A. I think at the time. I wasn't really thinking of the  
13 repercussions of it. I was kind of thinking ahead for my own  
14 sake, as far as my military career was involved.

04:38 15 Q. All right. Well, and to be fair, at this point in time  
16 you're under the influence of alcohol, as well?

17 A. Correct.

18 MR. MCKINNEY: So, let's roll ahead then to Bortz  
19 98 -- sorry -- Bortz 83 and go to Page 974.

04:38 20 And before you put it up, please, the top  
21 paragraph has been ruled by the Court to be -- to need to be  
22 redacted. So, don't -- show the top paragraph redacted in  
23 whatever way needs to be -- however you do that. Do you know  
24 what I'm --

04:39 25 MR. RUNIONS: It's redacted.

04:39

1

MR. MCKINNEY: Okay. Good.

2

BY MR. MCKINNEY:

3

Q. Now, let's look, actually, at the bottom part, which is

4

highlighted. Do you remember Chief Petty Officer Diaz-Pelot?

04:39

5

A. No, not exactly.

6

Q. Well, you know that when there's an issue like this on a

7

navy base, a member of the Naval Investigative Service becomes

8

involved and looks into it?

9

A. Yes.

04:39

10

Q. And as you can see here, if you look at the last paragraph,

11

the State Department was actually asking Chief Petty

12

Officer Diaz-Pelot -- that's, by the way, what "CPO" stands

13

for, "chief petty officer"?

14

A. Correct.

04:40

15

Q. Apparently Chief Petty Officer Diaz-Pelot was the

16

investigator on this matter. Have you become aware of that

17

since that time?

18

A. Yes.

19

Q. And CPO Diaz-Pelot was being asked about her interaction

04:40

20

with your wife -- that's the victim here in this report --

21

throughout the incident. And as you'll see, the CPO stated

22

that, "Joseph" -- that would be you, correct?

23

A. Correct.

24

Q. -- "was ordered to report to her office the following day."

04:40

25

Do you see that?

0 4 : 4 0 1 A. Yes.

2 Q. Now, by the following day, you had sobered up, correct?

3 A. Yes.

4 Q. You had not been in contact with your wife?

0 4 : 4 0 5 A. Correct.

6 Q. You knew that you were in some trouble?

7 A. Yes.

8 Q. You didn't want to get in any more trouble?

9 A. Correct.

0 4 : 4 0 10 Q. And you knew that you could either not answer questions --

11 because you have that right under the Uniform Code of Military

12 Justice, correct?

13 A. I did not know that.

14 Q. All right. But you knew that if you did answer questions

0 4 : 4 1 15 and you didn't tell the truth that you could get in trouble for

16 that?

17 A. Yes.

18 Q. Chief Petty Officer Diaz-Pelot goes on to state here,

19 "Stated that Sailor Daigle was very upset about the MPO" --

0 4 : 4 1 20 That would be the military protective order,

21 correct?

22 A. True.

23 Q. And it's true that you were upset about the military

24 protective order?

0 4 : 4 1 25 A. Correct.

0 4 : 4 1 1 Q. -- "because his wife needed his support."

2 And as you'll see, sir, it goes on to state,  
3 quote, "He stated that he never hit her and that she would say  
4 the same thing."

0 4 : 4 1 5 Do you see that?

6 A. Yes.

7 Q. So, apparently, without having spoken to your wife, you  
8 reported -- subject, of course, to being in trouble for not  
9 telling the truth, you reported that you had not struck your  
0 4 : 4 2 10 wife and that she would back your story. That's essentially  
11 what you said?

12 A. That's what I said, yes.

13 Q. And you did say that? I mean, what's being reported here  
14 is actually what did happen, correct?

0 4 : 4 2 15 A. Yes, I did state that I didn't hit her.

16 Q. It goes on to state that at the time, you stated, quote,  
17 "Sailor Daigle stated that they had been drinking and his wife  
18 was on medication for stress and she knew she should not have  
19 been drinking but she was."

0 4 : 4 2 20 Did you make that statement?

21 A. Yes, to support what I was stating, that I stated that I  
22 never hit her.

23 Q. I'm asking if you made the statement about your wife being  
24 on medication for stress and that she knew she should not have  
0 4 : 4 3 25 been drinking but that she was. Did you make that statement?

0 4 : 4 3 1 A. I don't recall if I had made a statement that said she was  
2 on medication for stress or not.

3 Q. "Sailor Daigle stated that his wife was involved in an  
4 incident in Iraq; but CPO Diaz-Pelot did not ask what the  
0 4 : 4 3 5 incident was, nor did she ask what kind of medication his wife  
6 was taking."

7 Do you recall making that statement to  
8 Chief Diaz-Pelot?

9 A. Correct, yes.

0 4 : 4 3 10 Q. And, by the way, a CPO is normally referred to as "chief,"  
11 like the army equivalent or the marine equivalent would be  
12 "sergeant"?

13 A. Correct.

14 Q. All right. Now, we may revisit that exhibit a little bit;  
0 4 : 4 4 15 but now I want to ask you some questions about how your wife,  
16 Jamie Leigh Jones, reported the incident to various people.  
17 All right, sir?

18 A. Okay.

19 MR. McKINNEY: If we could put up Bortz 219.

0 4 : 4 4 20 And if we could enlarge the history.

21 BY MR. McKINNEY:

22 Q. As you can see, this is the ambulance note, because your  
23 wife was transported by ambulance, correct?

24 A. I'm not sure. I was removed from the scene immediately.

0 4 : 4 4 25 Q. Did you later learn that your wife was transported by



04:44 1 ambulance?

2 A. I don't think I have.

3 Q. Well, as you can see from this ambulance report, she was.

4 And if you look at the third line down, there is a statement  
04:45 5 attributed to your wife in quotes. Do you see that?

6 A. Yes.

7 Q. It begins, "Patient stated," quote, "that she was sitting  
8 in the bar when her husband suddenly struck her in the right  
9 cheek bone," close quote.

04:45 10 Do you see that?

11 A. Yes, I see that.

12 Q. Did you -- none of this happened in the bar, did it?

13 A. No, it didn't.

14 Q. And you didn't strike your wife in the right cheek bone in  
04:45 15 the sense that you doubled up your fist and drew back and hit  
16 her, did you?

17 A. No.

18 Q. As I understand what you were explaining to Mr. Estefan and  
19 to me just a moment ago, you were essentially trying to do what  
04:45 20 police officers do sometimes with unruly suspects, hold your  
21 wife with your right hand and with your left hand assist her or  
22 move her into the car. Is that correct?

23 A. After I had initially struck her in the face.

24 Q. Now, did you actually strike her in the face intending to  
04:46 25 strike her or was that an inadvertent strike that was as a

04:46 1 result of simply trying to get your wife to be in the car?

2 A. It was an inadvertent strike; but it was a strike, I -- not  
3 intentionally meant to hit her that hard. And I did hit her in  
4 the face because I was trying to push her, but I just -- being  
04:46 5 drunk, I wasn't a very good judge of distance, I guess, and I  
6 struck her in the face instead of pushing her.

7 Q. I understand. But what you're -- and, so, what you're  
8 telling our jury is that what happened that day, as unfortunate  
9 as it is, was accidental and not intentional, inadvertent and  
04:46 10 not on purpose in terms of striking your wife?

11 A. At the moment, I was intentionally trying to put her in the  
12 car.

13 Q. But you had no intention of hitting her or hurting her?

14 A. I can't recall exactly. I was pretty angry at that  
04:47 15 instant. So --

16 Q. In any event, this business where your wife apparently is  
17 reporting to the ambulance attendant, to the paramedic, that  
18 she was sitting in the bar when her husband suddenly struck her  
19 in the right cheek bone, that would not be an accurate  
04:47 20 description of what happened, would it?

21 A. No.

22 MR. McKINNEY: Let's look at Bortz 221.

23 And let's blow up "History of Present Illness."

24 BY MR. McKINNEY:

04:48 25 Q. By the way, do you remember whether you left a mark during

04:48 1 this altercation?

2 A. I do not know because I was removed immediately from her  
3 and I was put on restraining order right away.

04:48 4 Q. All right. This is a note by Commander Brendon Gelford,  
5 who was the doctor on duty there at Balboa Naval Hospital.

6 A. Okay.

7 Q. And he reports under "History of Present Illness" that this  
8 is a 22-year-old female who presented to the emergency  
9 department with a history of being assaulted by her husband at  
04:48 10 approximately 2000, Sunday, 8 April, 2007."

11 That would be about 8:00 in the evening, correct?

12 A. Correct.

13 Q. Commander Gelford notes, continuing now with the -- his  
14 notes, quote, "She changed her story a few times and with me  
04:49 15 she initially reported" -- and this is what he wrote down that  
16 your wife said -- "that she was informing her husband that she  
17 might have been pregnant and her husband got very angry and  
18 started hitting her in the stomach and also hit her on the  
19 right side of the face."

04:49 20 That's the first thing that Commander Gelford  
21 wrote down that your wife said. Now, is any part of that true?

22 A. No. She -- I wasn't hitting her because I thought she was  
23 pregnant.

04:49 24 Q. Would you ever in a million years strike a woman who told  
25 you that she was pregnant?

04:49 1 A. No.

2 Q. Can you imagine why, in a million years, your wife would  
3 have given such a report to Commander Gelford?

4 A. I don't think she would have given such a report, no.

04:50 5 Q. Can you imagine why, then, Commander Gelford would have  
6 written it down?

7 A. I don't know why he would have written it down. Could have  
8 been just an error.

9 Q. You think he might have made a mistake?

04:50 10 A. Probably. Most likely, is what it looks like.

11 Q. Well, let's see what else Commander Gelford wrote down.

12 The next paragraph begins, quote, "She  
13 subsequently changed her story and reported that she was at the  
14 bowling alley on the base with her husband and her husband  
04:50 15 became very upset because she was winning and started hitting  
16 her in the stomach and hit her in the face on the right side,"  
17 close quote.

18 Is any part of that a true description of what  
19 happened that day between you and Ms. Jones?

04:51 20 A. No, I don't think so.

21 Q. And whether your wife is a better bowler than you are or  
22 not -- and I don't really care -- if you were losing at  
23 bowling, would you ever in a million years kick a woman in the  
24 stomach and hit her in the face?

04:51 25 A. No.

04:51 1 Q. Can you imagine why, if your wife, in fact, told  
2 Commander Gelford this, why she would do so?

3 A. No.

4 Q. Can you imagine a commander in the United States Navy, the  
04:51 5 equivalent of a lieutenant colonel in the marines or the  
6 army -- that's a fairly senior officer, is it not?

7 A. Yes.

8 Q. -- with medical training, medical degree, a medical doctor,  
9 can you imagine how a commander in the United States Navy,  
04:52 10 speaking to your wife, could get two stories like this from  
11 your wife without her actually communicating these stories to  
12 him?

13 A. Yes.

14 Q. And how do you think that might happen?

04:52 15 A. Just from other people telling him. If he wasn't  
16 communicating with my wife, he had to get it from somewhere.

17 Q. Well, if you look at this record carefully, I think, will  
18 you agree with me that the way Commander Gelford is writing it  
19 down he appears to be speaking directly to your wife? Do you  
04:52 20 see that?

21 A. It appears that way from the wording he's chosen.

22 Q. All right. And in your experience, do commanders in the  
23 United States Navy normally know how to express themselves  
24 clearly and accurately in the English language?

04:52 25 A. Yes.

0 4 : 5 2 1 Q. And in your experience, do commanders in the United States  
2 Navy normally -- are they normally capable of perceiving a  
3 conversation, hearing a conversation with someone such as you  
4 or your wife and understanding what is being said?

0 4 : 5 3 5 A. I'm sorry. Can you ask that again?

6 Q. Is it your experience that senior officers in the United  
7 States Navy, when having a conversation with someone like your  
8 wife or you, would have the intelligence and the ability to  
9 understand what is being said by either you or your wife?

0 4 : 5 3 10 A. I believe a commander would be able to understand what  
11 someone is telling them.

12 Q. So, if we assume that Commander Gelford was speaking with  
13 your wife, as he indicates here, and if we assume that  
14 Commander Gelford understood what your wife was saying, then we  
0 4 : 5 3 15 would also have to assume that Commander Gelford actually wrote  
16 down what your wife said, would we not?

17 A. You could assume that, yes.

18 Q. And that would be a reasonable assumption, wouldn't it?

19 A. Yes. And it's also a reasonable assumption that people  
0 4 : 5 4 20 make mistakes also. So --

21 Q. All right. And perhaps -- well --

22 A. Just depends on which way you want to assume.

23 THE COURT: Why would a military officer be motivated  
24 to make such a dramatic series of mistakes?

0 4 : 5 4 25 THE WITNESS: I don't think that a military officer

04:54 1 would be motivated to make a serious mistake intentionally, no.

2 BY MR. MCKINNEY:

3 Q. Let's assume for just a moment that Commander Gelford  
4 accurately wrote down what your wife said.

04:54 5 A. Okay.

6 Q. All right?

7 Can you supply any reason to our jury why your  
8 wife would describe the event that you have told us about as  
9 either being you hitting and kicking your wife in the stomach  
04:55 10 upon learning that she was pregnant, or, alternatively, you  
11 hitting and kicking your wife in the stomach and the face  
12 because you were losing at bowling? Can you think of any  
13 reason in the world why your wife would describe the event  
14 you've described in either of those two ways?

04:55 15 A. The only thing -- the factor, I guess, I would consider  
16 that might have possibly contributed to this was -- depending  
17 on my wife's state at the time. She was really upset from the  
18 event that happened. You know, she could have -- I mean, at  
19 the time, we had been trying to get pregnant for awhile. So,  
04:55 20 she could have just been really upset and he misheard her.  
21 That's the only explanation I can think of that --

22 Q. Does that seem like a very good explanation to you?

23 A. No.

24 Q. Now, let's dial back to --

04:56 25 THE COURT: We have to look for a point to wind it up

04:56 1 here. I've got a 5:00 o'clock hearing.

2 MR. McKINNEY: My time is your time, Judge. If you  
3 want to stop now --

4 THE COURT: This is a good stopping point. We're  
04:56 5 going to start at 8:00 a.m. tomorrow. Is that right?

6 Okay. Would all please rise for the jury?

7 *(Jury not present)*

8 THE COURT: You may step down, sir. You're free to  
9 leave the courtroom. Thank you.

04:57 10 Okay. Anything we need to discuss? I've got  
11 something else we need to turn to. Anything we need to  
12 discuss?

13 All right.

14 *(Proceedings recessed for evening)*

15 \* \* \* \* \*

16 COURT REPORTER'S CERTIFICATION

17 I certify that the foregoing is a correct transcript from  
18 the record of proceedings in the above-entitled cause.

19 Date: June 29, 2011

20  
21 /s/ Cheryll K. Barron

22 Cheryll K. Barron, CSR, CMR, FCRR  
23 Official Court Reporter  
24  
25





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